Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term, 1996

TED R. PERKINS, II,
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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26 pp

QUESTION PRESENTED FOR REVIEW

DID THE ACTIONS OF THE PENNSYLVANIA STATE POLICE CONSTITUTE AN INTENTIONALLY COERCED ABANDONMENT OF BUS PASSENGER PERKINS' CARRY ON BAG?

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REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS

1. United States Court of Appeals for the Third Circuit, No. 95-7265 USA v. Ted Russell Perkins, II Memorandum Opinion filed June 19, 1996 - Not for Publication

   Set forth in full at Appendix pp. 28-43

2. United States District Court for the Middle District of Pennsylvania, USA v. Ted Russell Perkins, II Memorandum and Findings of Fact filed January 5, 1995

   Set forth in full at Appendix pp. 1-27

   All Opinions are contained in the Appendix.

STATEMENT OF JURISDICTION

The Supreme Court of the United States has jurisdiction pursuant to Title 28, Section 1254(1) P.L. 100-352, §2(a)(b) 102 Stat. 662 of the final order of the United States Circuit Court of Appeals for the Third Circuit filed the 19th day of June, 1996.

CONSTITUTIONAL PROVISIONS

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describe the place to be searched, and the persons or things to be seized.

FOURTEENTH AMENDMENT, SECTION 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE FACTS

Appellant Ted R. Perkins, II was indicted on a count of Distribution and Possession with Intent to distribute approximately three (3) kilograms of cocaine by a grand jury on September 20, 1994 in violation of Title 21 U.S.C. §841(a)(1) and (b)(1)(A) and also Title 18 U.S.C. §2. Jurisdiction was also predicated on the provisions of Title 18 U.S.C. §3231.

On November 29, 1994 a Motion to Suppress Certain Evidence (contents of a black bag including approximately 3 kilos of cocaine) was filed. A hearing was held on the Motion to Suppress Evidence on December 29, 1994 an continued on January 3, 1995. Following said hearing the Suppression Motion was denied on January 5, 1995.

On January 12 and 13, 1995 Appellant was tried before a jury and on January 13, 1995 was found guilty as charged. At trial, the evidence sought to be suppressed at pretrial was used by the Government.

A Motion to Permit Filing a Motion for a New Trial was filed on January 23, 1995, was granted by the Trial Court on January 30, 1995 and the Motion for a New Trial (because of use of evidence sought to be suppressed) was denied by the District Court on January 30, 1995.

Ted Perkins, II was sentenced on April 18, 1995.

On September 1, 1994, the Pennsylvania State Police "interdicted" a bus at the Milesburg Exit of Route 80 at the Best Way Truck Stop, Appendix Vol. I, pp. 70-77. The Pennsylvania State Police have no information that the particular bus "interdicted" contained any illegal drugs, but the police

"interdicted" the bus in hopes of finding illegal drugs, Appendix Vol. II, pp. 172-175.

The Pennsylvania State Troopers wear identifying clothing, hats or jackets and some "interdiction team" members even display their police badges, Appendix Vol. 1, pp. 77-80. "We want to show the peoples that we are, in fact, the state police," Appendix Vol. I, pp. 77-79. The "interdiction team" is stationed near the door of the bus. Trooper Barber stationed himself near the bus door to watch the people disembark the bus, Appendix Vol. I, pp. 79-80. Trooper Barber watches the behavior of the people who leave the bus. The "team" also watches the passengers inside the bus "to see who's placing packages where, who's placing bags where," Appendix Vol. I, pp. 83-84 and Vol. II, pp. 175-177.

There was also a canine unit being prepared to board the bus handled by Trooper Jack Felicitia. The dog was about thirty feet

from the bus between it and the truck stop, Appendix Vol. I, pp. 83-88.

A young, thin black male exited the bus in a tired or groggy manner, stretching as if he just woke up, walked about ten or fifteen feet and then noticed Trooper Barber's presence. The young black man got a bewildered look on his face looking at Trooper Barber and then the canine, Appendix Vol. I, pp. 83-86. See also Appendix Vol. II, pp. 175-177.

The Pennsylvania State Troopers then intend to put the dog on the bus to check the interior of the bus, Appendix Vol. I, pp. 94-95. In fact, the canine was walked onto this particular bus, Appendix Vol. I, pp. 94-95 and Vol. II, pp. 178-179.

The tall, thin black male who disembarked the bus continued to watch the Pennsylvania State Police officer, pacing the sidewalk in front of the Best Way door, Appendix Vol. I,

pp. 91-95. In fact, Mr. Perkins was identified as the tall, thin, groggy black male, Appendix Vol. I, pp. 86-89. Mr. Perkins was on this sidewalk watching the police when the canine was taken on the bus, Appendix Vol. I, pp. 91-95 and Vol. II, pp. 179-180.

When the canine was taken on the bus the police asked all passengers to exit the bus before the dog is taken on the bus. In this instance all of the passengers exited the bus except for one woman, Appendix Vol. I, pp. 92-94 and Vol. II, pp. 207-210. This one older woman was sitting "directly" in front of the seat containing a bag no one claimed, Appendix Vol. I, pp. 118-119.

During the "interdiction" Trooper Barber learned that the tall, thin black male identified as Ted Perkins, II had boarded the bus in Newark, New Jersey, some four (4) minutes after it was to leave, Appendix Vol. I, pp. 98-99.

When the bus was reboarding, Trooper Barber could not find Mr. Perkins on the bus. Trooper Barber looked inside the facility. Trooper Barber checked the restaurant, game room, the store, hallways and the upstairs shower area of the bus stop, Appendix Vol. I, pp. 104-105. Mr. Perkins could not be found, and on cross, Trooper Barber admitted that he wanted to find Mr. Perkins to ask him some questions that Mr. Perkins did not have to answer, Appendix Vol. II, pp. 214-215. In fact, Trooper Barber wanted to make sure that Mr. Perkins got back on the bus, Appendix Vol. II, pp. 213-214. However, Trooper Barber admitted that when he was searching for Mr. Perkins, he "absolutely" did not have probable cause to arrest Mr. Perkins, Appendix Vol. II, pp. 213-214. Earlier Trooper Barber had stated that there was at all times a state trooper outside the bus in question, Appendix Vol. II, pp. 183-186.

After Mr. Perkins was not found, the "interdiction team" reboarded the bus and located a black leather bag (specifically described at Appendix Vol. I, pp. 119-121) which no passenger claimed. This black leather bag was taken off the bus after other passengers stated the bag belonged to the missing Mr. Perkins, Appendix Vol. I, pp. 116-124.

The black leather bag was taken off the bus by Trooper Barber and opened near the bus. Inside were various objects including three (3) kilograms of cocaine, Appendix Vol. I, pp. 124-128.

At suppression Mr. Perkins testified that he did not see the state troopers until he had exited the bus and walked ten to fifteen feet, Appendix Vol. II, pp. 226-228. Mr. Perkins saw the state police take the dog onto the bus, Appendix Vol. II, pp. 179-180. Mr. Perkins went around the truck stop to the side

of the truck stop where he watched the police around the bus and police on the bus, Appendix Vol. II, pp. 241-242. Mr. Perkins then saw an officer get off the bus with the black leather bag and open it up, Appendix Vol. II, pp. 250-251. However, before he saw the officers open the leather bag, Mr. Perkins intended to reboard the bus as it department and moved very near where he was, Appendix Vol. II, pp. 247-250.

After the police had the black leather bag, Mr. Perkins went back around the building, threw his bus ticket away and eventually was arrested at a neighboring truck stop, Appendix Vol. II, pp. 242-244 and pp. 258-259.

The jurisdiction of the United States Circuit Court of Appeals for the Third Circuit is predicated on Title 28, U.S.C. §1291.

ARGUMENT

THE ACTIONS OF THE PENNSYLVANIA STATE POLICE CONSTITUTE AN INTENTIONALLY COERCED ABANDONMENT OF BUS PASSENGER PERKINS' CARRY ON BAG AND THE FRUITS OF THE BAG'S SEARCH.

The facts of this case present an opportunity for this Court to address and lay to rest one of the most perplexing issues concerning the abandonment of property. Police authorities welcome the abandonment of property because abandoned property may be searched without a warrant. However, this Court must be forever vigilant to ensure that police authorities are not using tactics that will amount to intentional coercion to in some strong sense knowingly or intentionally force an individual to abandon his property. This forced abandonment must not come about solely from a guilty knowledge of the contents of a package or luggage. However, if the police

authorities are aware of that guilty knowledge and shape their tactics to take advantage of an innocent separation between the person and container to force an abandonment of that container, then the police authorities go too far. This is an abandonment of property that does not lose the protection of the Fourth Amendment warrant requirements.[1]

Under the facts of this case, the Pennsylvania State Police "interdicted" a Greyhound bus at a rest stop lasting about 45 minutes where the "interdiction team" knew that the passengers would debark the bus without their carry-on luggage, Appendix Vol. I, pp. 79-83. The "interdiction team" observes the debarking passengers on the bus to observe where various passengers leave their bags, Appendix Vol. I, pp. 83-84.

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[1] The Pennsylvania State Police are restricted by the Fourth Amendment warrant requirements as applied to Pennsylvania through the Fourteenth Amendment.

When the passengers debark to walk 50 feet to the facilities, the State Police station themselves so that they may be certain that debarking passengers see them and react to the State Police in police jackets, hats and badges, Appendix Vol. I, pp. 79-84. Certain troopers intend to observe debarking passengers reactions to the police.

It can be stated that the Pennsylvania State Police "interdiction team" intentionally takes advantage of the fact that bus passengers debark at this rest stop leaving their carry-on luggage on the bus and only alert the debarking passengers to the police presence after they leave their carry-on luggage on the bus.

The "interdiction team" then further exploits the fact that debarking passengers leave their carry-on baggage on the bus while they enter the restaurant for their rest stop. The Pennsylvania State Police then enter the

nearly empty bus after many passengers debark, requesting that the remaining passengers debark and conduct a canine sniff search of the carry-on baggage left on the bus by the original group of passengers debarking for the rest stop and a meal, Appendix Vol. I, pp. 83-88, pp. 94-95, and Vol. II, pp. 178-179.

The police authorities have taken advantage of an "innocent" separation of the debarking passengers and their carry-on baggage. The authorities have seized the bus containing absent passengers' carry-on baggage and then take a canine "interdiction team" member onto the bus. An "interdiction team" Pennsylvania State policeman remains either on the bus or next to the door at all times, Appendix Vol. II, pp. 183-186. This is a far cry from how a more frequently raised intentional coerced abandonment is raised.

More frequently, a claim of intentional coercion is raised when an abandonment of

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baggage takes place due to police conduct.[2] A good example of this may be found in the facts of United States v. Colbert, 474 F.2d 174 (5th Cir. 1973). In Colbert, the claim of intentional coercive conduct (harassing) arose because as police officers approached two men, both men placed their briefcases on the sidewalk. Upon police questioning, these gentlemen claimed to be book salesmen. The two gentlemen were then asked if the police could see their "wares" (contents of the grounded briefcases), the gentlemen asserted that they need not show police anything, but then denied the grounded briefcases were theirs. The two gentlemen began walking away without the briefcases. The officers then requested their Selective Service Cards from

[2] In this Petition, the original separation of the debarking (to the facilities) passengers from their carry-on baggage was innocent and as the passengers debarked was not an abandonment.

the two gentlemen, failing to produce these cards, the gentlemen were arrested and placed in the patrol car. At which time the two gentlemen again denied ownership of the grounded briefcases. A search of the abandoned briefcases revealed sawed-off shotguns inside. The majority in Colbert held that the briefcases were abandoned but a strong dissent cast doubt on the abandonment because the disclaimer of ownership was not believed by the police to justify the subsequent search.

This line of cases has continued into the present era usually concerning searches of buses that result in either 1) consent to search or 2) denial of ownership of a carry-on bag. The subsequent search of the bag is outside the Fourth Amendment Warrant requirements in either case permitting the use of discovered contraband at trial. See for

example, United States v. Lewis, 921 F.2d 1294 (D.C. Cir. 1990).

In Lewis, each of the bus passengers, Dennis S. Lewis and Leight T. Cothran consented to the search or denied ownership of the bag search. See Lewis, supra. 972 F.2d at 1296-1297.

As in most of this line of cases, the bus passengers complained of an intentionally coercive atmosphere created by the police that resulted in their either consent or denial of ownership (abandonment).

In each case the District Court agreed with the passengers and suppressed the results of both searches. The Appeals Court reversed finding no coercion.

The Pennsylvania State Police in the case of Petitioner Perkins present an entirely different set of facts by taking advantage of a known, innocent separation of the rest stopping passengers and their carry-on baggage

to seize the bus and baggage to conduct a canine sniff search while passengers were not present.

To begin with, the "interdiction team" had no indication that this particular bus pulling into the rest stop contained illegal drugs, Appendix Vol. II, p. 173. The police knew that the passengers debark the bus (Appendix Vol. I, pp. 79-80) and walk about 50 feet into the facilities, Appendix Vol. I, p. 83. The testifying Pennsylvania State Police Trooper Ernest W. Barber likes to observe the reactions of debarking passengers as they see the identifiable "interdiction team," Appendix Vol. I, p. 84. Admittedly, the "interdiction team" also watch the passengers debarking to observe where the various passengers leave their bags, Appendix

Vol. I, p. 84.[3] Of course, the Pennsylvania State Police "interdiction team" wears certain clothing that allows passengers to identify them as Pennsylvania State Police Troopers, Appendix Vol. I, pp. 76-79.

Specifically regarding Petitioner Perkins, he was a debarking passenger. Perkins was groggy as if he had been sleeping. He stretched and appeared to be tired, Appendix Vol. I, pp. 85-86. When Perkins saw the identifiably attired "interdiction team" member, Perkins stopped, "got a bewildered look on his face, he looked at me and he looked at the canine," Appendix Vol. I, pp. 83-86. This drew Trooper Barber's attention.

These facts demonstrate two (2) concepts. First, the Pennsylvania State Police knew the passengers would debark at the rest stop

[3] The "interdiction" of this particular bus occurred after dark at about 9:45 p.m. on September 1, 1994, Appendix Vol. I, pp. 76-79.

leaving their carry-on baggage on the bus. Secondly, the "interdiction team" wanted the debarking passengers to know that the Pennsylvania State Police were going to the bus with a canine unit where the passengers had innocently left their carry-on baggage.

These facts must be examined to control the police authorities in these type of cases. Where the authorities claim an abandonment of baggage--has their own conduct in taking advantage of an innocent separation of passengers and baggage to seize the baggage to conduct (in the view of the passengers) a canine search coerced the abandonment of the baggage in this Petition.

Respectfully submitted,

By: _____
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Attorney for Petitioner

(2)

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APPENDIX TO PETITION
FOR WRIT OF CERTIORARI
Volume I of II

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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	No. 4:CR-94-0213
	:	Judge McClure
vs.	:	
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

M E M O R A N D U M

January 5, 1995

Background:

On September 20, 1994, a grand jury sitting in the Middle District of Pennsylvania returned a one-count indictment charging defendant Ted Russell Perkins II with distributing and possession with intent to distribute a controlled substance.

Before the court is defendant's motion to suppress evidence seized at a bus station by members of the Pennsylvania State Police. Defendant contends that the seizure violated his rights under the Fourth Amendment. A hearing on the motion commenced December 29,

1994, and concluded January 3, 1995, after jury selection. Presentation of the case to the jury is scheduled to begin January 12, 1995.

DISCUSSION:

I. STANDARD UNDER THE FOURTH AMENDMENT: ABANDONMENT

In order to challenge evidence as the fruit of an unlawful search, the defendant must have a constitutionally protected, reasonable expectation of privacy. Katz v. United States, 389 U.S. 347 (1967). The inquiry is a two-pronged, "subjective-objective" test: (1) Has the defendant manifested a subjective expectation of privacy in the object of the challenged search? (2) Is the defendant's expectation one which society is willing to recognize as reasonable? California v. Ciraolo, 476 U.S. 207, 211 (1986) (citing Katz, supra).

The Fourth Amendment does not protect abandoned property. Abel v. United States, 362 U.S. 217, 241, reh'g denied, 362 U.S. 984 (1960). The test for abandonment is the obverse of the objective prong of the reasonable expectation test:

> The test for abandonment is whether an individual has retained any reasonable expectation of privacy in the object. This determination is to be made by objective standards. An expectation of privacy is a question of intent which "may be inferred from the words spoken, acts done, and other objective facts."

United States v. Rem, 984 F.2d 806, 810 (7th Cir.)(citations omitted), cert. denied, 126 L.Ed. 2d 248 (1993). See also United States v. Lee, 916 F.2d 814, 818 (2d Cir. 1990) ("When a person voluntarily abandons property . . . he forfeits any reasonable expectation of privacy that he might have had in the property."). The objective facts known to law enforcement officers at the time of the search determine whether there is a reasonable

continued expectation of privacy, i.e., whether the property has been abandoned. Rem, 984 F.2d at 811.

Abandonment must be voluntary in fact; it is not voluntary if it is the result of a preceding Fourth Amendment violation or other illegal police conduct. United States v. Ward, 961 F.2d 1526, 1535 (10th Cir. 1992). In Ward, the Tenth Circuit held that the abandonment was not voluntary because of a per se rule that police presence in a confined area, such as a train roomette, is coercive. Ward has been overruled to this extent, since the Supreme Court held in Florida v. Bostick, 115 L.Ed. 2d 389 (1991), that no such per se rule exists, and established a totality of the circumstances test:

> ...[N]o seizure occurs when police ask questions of an individual, ask to examine the individual's identification, and request consent to search his or her luggage--so long as the officers do not convey a message that compliance with their requests is required.

. . .

> We adhere to the rule that, in order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.

115 L.Ed. 2d at 400, 401-402.

Although the Supreme Court in Bostick was reviewing the voluntariness of consent, 115 L.Ed. 2d at 400, while the Tenth Circuit in Ward was reviewing the voluntariness of abandonment, the Tenth Circuit held that the same test applies in each instance. 961 F.2d at 1535. This part of the holding of Ward is unaffected by Bostick. See United States v. Little, 18 F.3d 1499, 1503-1504 and 1504 n. 5 (10th Cir. 1994).

There are, then, two separate objective tests. As to abandonment, the test is whether a reasonable person with knowledge of the facts and circumstances known to the police

officer at the time of the purported abandonment would believe that the owner had relinquished all interest in the privacy of the property. As to whether the abandonment was voluntary, the test is whether the police conduct was so coercive that a reasonable person would believe that he had no choice but to act as he did, i.e. to abandon the property.

II. FINDINGS OF FACT

1. The Bestway Truckstop is located near the Milesburg exit (Exit 23) of Interstate Highway 80 (I-80), at the intersection of Pennsylvania Routes 150 and 220, about one mile north of Milesburg.

2. The Bestway Truckstop is used by Greyhound buses traveling on I-80, though its primary use is by truck drivers.

3. The Bestway Truckstop consists of a restaurant, game room, convenience store, motel rooms, and shower facilities.

4. Also in the vicinity of the Bestway Truckstop is a Days Inn and the Buckhorn stop.

5. Other than those facilities, the Bestway Truckstop is isolated, being surrounded by open fields, corn fields, and a wooded area.

6. On September 1, 1994, a Greyhound bus bound from New York City, New York, to Cleveland, Ohio, made a scheduled stop at the Bestway Truckstop.

7. On September 1, 1994, troopers of the Pennsylvania State Police, Bureau of Drug Law Enforcement, Tactical Narcotics Team, were engaged in narcotics interdiction efforts at the Bestway Truckstop.

8. The bus bound for Cleveland arrived at the Bestway Truckstop at approximately 9:45 p.m.

9. When a bus stops at the Bestway Truckstop, the bus driver and passengers generally leave the bus to use the restaurant, convenience store, restrooms, or other facilities at the Truckstop.

10. Members of the Tactical Narcotics Team routinely observe the passengers as they leave the bus for the purpose of observing their reaction to the presence of troopers, to see which passengers have bags and where the bags are placed, etc.

11. When engaged in drug interdiction efforts, members of the Tactical Narcotics Team display some emblem of their authority and position, such as hats, jackets, or badges worn on a chain around the neck.

12. On September 1, 1994, defendant Ted Russell Perkins II was a passenger on the bus which stopped at the Bestway Truckstop at 9:45 p.m.

13. Perkins had boarded the bus at Newark, New Jersey.

14. Both New York City and Newark are known to the Tactical Narcotics Team as source cities for the flow of narcotics through Pennsylvania to such cities as Cleveland or Chicago.

15. When the bus stopped at the Bestway Truckstop, it was positioned near the entrance to the Truckstop, about 50 feet from the door.

16. When the bus stopped at the Bestway Truckstop, Trooper Ernest W. Barber of the Tactical Narcotics Team positioned himself approximately 10 to 15 feet from the bus door.

17. Two other troopers assigned to the Tactical Narcotics Team were positioned in the same area.

18. Trooper Barber concentrated on watching the reactions of the passengers as they became aware of the presence of the Tactical Narcotics Team, who were identifiable

through their apparel or badges, and by the marked canine unit which was parked nearby.

19. The other troopers watched the passengers as they left the bus, as well as those still on the bus to see what might be done with baggage.

20. Defendant was somewhere in the middle of the group of passengers exiting the bus.

21. Upon leaving the bus, defendant appeared to Trooper Barber to be tired, sleepy, and to be stretching.

22. After leaving the bus and walking approximately 10 feet, defendant appeared to notice the troopers for the first time, and his face showed surprise and concern.

23. Because of defendant's reaction to the presence of the troopers, Trooper Barber took special notice of defendant and tried to keep defendant in sight.

24. Approximately 5 to 10 minutes after the passengers departed from the bus, a dog

trained to detect the presence of narcotics was brought onto the bus, and was walked at least part of the way down the aisle of the bus.

25. At the time the dog was on the bus, only one passenger was on the bus.

26. At the time the dog was on the bus, the other passengers had gone to the Bestway Truckstop building, though some stayed near the front of the building to watch the troopers.

27. Defendant stayed outside of the building, pacing back and forth in front of the building, in what appeared to Trooper Barber to be a nervous manner.

28. Defendant watched the troopers who were in the vicinity of the bus, and at times looked toward the wooded area near the Truckstop.

29. In addition to walking the dog onto the bus, the troopers checked the common areas

of the bus, and also looked over the tickets held by the bus driver.

30. One of the troopers, Trooper James Sattazhan, checked the tickets and found that one had been purchased at 6:04 p.m. on September 1, 1994, for a trip that was scheduled to begin at 6:00 p.m. on the same date.

31. Trooper Barber's training and experience have taught him that the manner of purchase of tickets for both bus and airplane trips may be an indicator of narcotics trafficking.

32. None of the tickets examined by the troopers showed a trip that ended in Pennsylvania, so that all of the passengers were going to points west of Pennsylvania.

33. During the time that the dog was taken onto the bus and the tickets and common areas checked by the troopers, Trooper Barber lost track of defendant.

34. Since defendant's conduct had aroused Trooper Barber's curiosity concerning defendant, Trooper Barber wanted to locate and watch defendant.

35. Trooper Barber conducted a search for defendant, looking in the restaurant, store, game room, rest room, basement, and several hallways of the Bestway Truckstop.

36. Trooper Barber did not look in the Buckhorn Truckstop, the Days Inn, or the parking area behind the Bestway Truckstop because none of those areas is frequented by passengers of the Greyhound buses which stop at the Bestway Truckstop.

37. Trooper Barber was unable to locate defendant in any of the areas in which a passenger on a Greyhound bus normally would be found in the Bestway Truckstop.

38. The members of the Tactical Narcotics Team returned to the bus when the time came for passengers to return to the bus.

39. An announcement over the public address system informed passengers inside the Bestway Truckstop building that the bus was preparing to depart.

40. When the troopers returned to the bus, they intended to ask passengers for consent to search baggage.

41. It is Trooper Barber's experience that nearly every passenger who is asked gives consent to a search of his or her baggage.

42. Had defendant returned to the bus, Trooper Barber fully intended to interview him for the purpose of obtaining consent to search his baggage.

43. At no time prior to its departure did defendant return to the bus.

44. While on the bus, the troopers found an unattended bag lying on a seat on the right side of the bus about one-third of the way back into the bus.

45. The unattended bag was not claimed by any of the people seated in the vicinity of the seat on which the bag was located.

46. The bus driver told the troopers that a person matching the description of defendant had carried the bag onto the bus at Newark.

47. The bus driver took notice of the man carrying the bag onto the bus because he had held up the bus for several minutes past its departure time at Newark. See ¶ 30.

48. Passengers on the bus also provided a description of the man to whom the bag belonged which matched the description of defendant.

49. The general description given by both the bus driver and the passengers was that of a tall, thin, black man wearing a black running suit.

50. The description given by the bus driver and the passengers matched defendant when seen by Trooper Barber as defendant

exited the bus and when defendant was pacing the walk in front of the Bestway Truckstop.

51. Trooper Barber held the bag up in front of the passengers who returned to the bus and asked whether anyone on the bus owned the bag.

52. No passenger on the bus claimed ownership of the bag.

53. The troopers removed the unattended bag from the bus and examined it, but found no labels or any other form of identification on the bag.

54. The troopers opened the bag and found three bricks of a white, powdery substance which field-tested positive for cocaine.

55. For purposes of the motion to suppress, defendant admits to possession of the bag. Motion to Suppress at 5 ¶ 24.

56. For purposes of the motion to suppress, defendant admits to being the holder of a valid ticket as a passenger on the bus.

III. SEARCH OF THE BUS

Although the point was not argued in his brief, defendant contended during the suppression hearing that the search of the bus was itself a violation of defendant's Fourth Amendment rights. This argument lacks merit: a single passenger on a bus does not have a privacy interest in the entire bus which is recognizable under the Fourth Amendment. The driver and bus company employees come and go, as do other passengers. A single passenger on a bus has no more interest in the privacy of the bus than a non-owner passenger in an automobile. See generally Rakas v. Illinois, 439 U.S. 128 (1978). See also Florida v. Bostick, 115 L.Ed. 2d 389 (1991)(boarding of bus by police to question passengers and to seek consent to search of baggage is not a per se violation of the Fourth Amendment). The boarding of the bus by the Pennsylvania State

Police at the Bestway Truckstop did not violate any Fourth Amendment rights on the part of defendant.

IV. ABANDONMENT

With regard to the issue of abandonment of the bag, the sole question is whether, based upon the facts and circumstances known to the law enforcement officers at the time of the search of the bag, defendant intended to retain an interest in the bag. The facts and circumstances known to the Tactical Narcotics Team when they removed the bag from the bus may be summarized as follows:

(1) Defendant was on the bus when it stopped at the Bestway Truckstop, and debarked with the rest of the passengers.

(2) Upon seeing the police and the canine unit, defendant showed signs of nervousness and agitation (acting in what counsel for the government termed a "furtive

manner" during the time that the dog was taken onto the bus, a description consistent with the testimony presented).

(3) Defendant stayed near the bus to watch the activities of the police, also scanning the wooded area near the Truckstop.

(4) Defendant disappeared from view during the initial search of the bus, when the dog was brought to the bus.

(5) Defendant could not be located in the Truckstop after this initial search was completed.

(6) Defendant did not return to the bus when it reboarded, and was not present when the second search was conducted, when the bus driver and passengers were interviewed.

(7) Defendant was traveling from Newark to Cleveland, and had bought his ticket four minutes after the scheduled departure time of the bus.

(8) Some passengers and the bus driver identified defendant as the owner of the bag; no other passenger claimed the bag.

(9) No passengers were scheduled to end their trip at the Bestway Truckstop, or even during the rest of the route through Pennsylvania.

Succinctly stated, defendant became nervous when he saw the police, remained agitated while the police were on the bus, disappeared, could not be located when the bus reboarded, and did not return at any time prior to the departure of the bus. These circumstances certainly would lead a reasonable person to conclude that defendant had abandoned his bag.

Although not argued by defendant, a contention could be made that a passenger might simply have forgotten to pick up his bag. The circumstances in this case, however, do not lead to such a conclusion. The Bestway

Truckstop was not a final destination for any passenger on the bus. Nor was the Truckstop a normal destination: it was simply a resting point in the middle of a long trip, located in a relatively remote, rural area of central Pennsylvania. Nor would such an area be a reasonable place for a passenger to simply wander off: there was nothing in the area to arouse particular interest.

Counsel for defendant also pointed out that the officers at the Truckstop did not have probable cause to arrest defendant until after they opened the bag. We agree. However, the officers did not engage in any activity for which probable cause was necessary. They searched a vehicle engaged in public transportation, an activity which is constitutionally permissible. Bostick, supra. They entered the areas of the Truckstop which are accessible to the public. They then re-entered the bus and interviewed the passengers

and bus driver. None of these activities constitutes an infringement of any interest protected by the Fourth Amendment, and no probable cause need be established before law enforcement officers may engage in any of these activities.

V. INVOLUNTARY ABANDONMENT

We have concluded, based upon the foregoing, that defendant abandoned his bag on the bus. Defendant argues, however, that the conduct of the troopers was so coercive as to have rendered his abandonment of the bag involuntary. To use defendant's terminology, he was "harassed" into abandoning the bag.

According to defendant, when the troopers searched the bus with the dog, then left the bus and entered the terminal, a reasonable person would conclude that they had found something. Since they had not found anything, their conduct must have been intended to

convey this impression for the purpose of causing defendant to avoid returning to the bus.

Actually, law enforcement officers who search a bus eventually will leave the bus, whether they have found anything or not.

Moreover, there is no support for the contention that the officers would go inside the terminal only if some incriminating object had been found on the bus. There can be any number of reasons for officers to enter the terminal: to talk to a bus driver; to wait for the next bus to come along; as in this case, to wait for the passengers to reboard the bus, so that they can seek permission to search bags; to use the facilities themselves; etc. It simply is not reasonable to conclude that a police officer who leaves a bus and enters a bus terminal necessarily has found incriminating evidence on the bus.

It should also be added that the attention of the troopers had not centered on the bag at that point in time. There is no indication that they were any more aware of defendant's bag than of any other bag on the bus. In fact, it was only after the other passengers had reboarded the bus that attention focused on the unattended bag. In no way, then, can the troopers have intended to "harass" defendant into abandoning his bag. Nor, as discussed above, would a reasonable person have perceived the conduct of the troopers as harassment.

We reiterate that the standard is objective: Would a reasonable person have felt that he or she had no choice but to abandon the bag? A reasonable person would not feel the need to abandon a bag simply because law enforcement officers are present. Defendant's argument would substitute this objective standard with a "reasonable drug

courier standard": Would a reasonable person with three kilos of cocaine in his or her bag have felt that he or she had nc choice but to abandon the bag? Obviously, the conclusion would be different based upon this standard, but this standard does not apply.

This is not an instance in which, for example, a police officer attempted to make a warrantless arrest without probable cause and a chase of the suspect ensued. Obviously, if such a suspect dropped some sort of object during the chase, even intentionally, the object would be inadmissible due to the earlier Fourth Amendment violation. Here, however, there was no earlier violation, and defendant made a reasoned choice to abandon his bag, not due to any coercion, but due to the chance that he might be caught with the cocaine.

VI. CONCLUSION

The conduct of the members of the Tactical Narcotics Team at the Bestway Truckstop was reasonable within the meaning of the Fourth Amendment. The areas searched initially were not subject to a cognizable privacy interest on the part of defendant. Based upon the facts and circumstances known to the troopers at the time that they reboarded the bus and interviewed the bus driver and other passengers, the troopers reasonably concluded that defendant had abandoned his bag. There was no coercive conduct on the part of the troopers which caused defendant to abandon his bag.

For all of these reasons, defendant's motion to suppress will be denied. An appropriate order shall issue.

/s/James F. McClure, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	No. 4:CR-94-0213
	:	JUDGE McCLURE
v.	:	
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

ORDER

January 5, 1995

For the reasons stated in the accompanying memorandum, IT IS ORDERED THAT defendant's motion (record document no. 24) to suppress certain evidence is denied.

/s/James F. McClure, Jr.
United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-7265

UNITED STATES OF AMERICA

vs.

TED RUSSELL PERKINS, II

Ted Perkins, II,
Appellant

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Crim. No. 94-CR-00213)
District Judge: Honorable James F.
McClure, Jr.

Submitted Under Third Circuit LAR 34.1(a)
June 6, 1996
Before: BECKER and MANSMANN, Circuit Judges,
and SCHWARZER, District Judge.*

(Filed June 19, 1996)

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* Honorable William W. Schwarzer of the United States District Court for the Northern District of California, sitting by designation.

MEMORANDUM OPINION OF THE COURT

MANSMANN, Circuit Judge.

In the matter before us, Ted R. Perkins, II, was charged, in the United States District Court for the Middle District of Pennsylvania, with one count of distribution and possession with intent to distribute approximately 3 kilograms of cocaine in violation of 21 U.S.C. §841(a)(1) and §841(b)(1)(A) and 18 U.S.C. §2.

Perkins filed a motion to suppress a black bag which had contained the cocaine, and following a hearing, the district court denied the motion. Perkins was then tried before a jury; during the trial, the evidence to which he objected was presented by the government. After the jury returned a verdict of guilty, the district court sentenced Perkins to 97 months of imprisonment with a subsequent term of supervised release of 4 years and a special assessment of $50.00. Perkins filed a motion

to permit the filing of a motion for a new trial based on the evidence which he had moved the court to suppress. The motion was granted, but the ensuing motion for a new trial was denied by the district court.

Prior to sentencing, the Probation Department prepared a Presentence Report to which Perkins filed objections, specifically, to the inclusion of two reported prior criminal convictions. In addition, Perkins asserted that he should receive a two point reduction for minor role in the offense as he was merely a "mule" in the transportation of the cocaine.

In this appeal, we are asked to decide whether the district court erred in denying Perkins' motion to suppress the evidence and whether the district court erred, first, in not granting Perkins' objections to the presentence report; and second, in declining to reduce the offense level by two levels

based upon Perkins' alleged minor role in the offense.

I.

On September 1, 1994, members of the Pennsylvania State Police "interdiction team" intercepted a Greyhound bus traveling from New York, New York to Cleveland, Ohio as it arrived at the Best Way Truck Stop at the Milesburg Exit of Route 80 in rural Centre County, Pennsylvania. The State Police, wearing identifying clothing, positioned themselves near the bus to observe the passengers as they disembarked. Officer Ernest W. Barber stood closest to the door; a canine unit with Officer Jack Felicitia prepared to board the bus.

A thin, young, black male whom Officer Barber later identified as Ted R. Perkins, II, exited the bus in a "groggy" manner as though he had been sleeping. When he noticed Officer Barber, Perkins appeared bewildered and

focused his attention on the officers and the canine unit. Perkins paced along the sidewalk in front of the door to Best Way when the canine unit boarded the bus. All but one passenger had departed the bus as requested by the officers.

When the passengers were reboarding the bus, Perkins was noticeably absent. Officer Barber searched the truck stop but could not locate him. The interdiction team then reboarded the bus and secured an unclaimed black leather bag which several passengers stated belonged to Perkins. Several of the passengers and the busdriver gave descriptions of Perkins as he had appeared when he boarded the bus late in Newark, an action which had delayed the departure of the bus. Officer Barber then removed the leather bag from the bus and opened it. Among other items contained in the bag were 3 kilograms of

cocaine. Perkins was arrested a short time later at a nearby truck stop.

II.

Perkins maintains that the district court erred in denying his motion to suppress the black leather bag which contained the cocaine. He argues that he was involuntarily forced to abandon his bag due to the coercion and harassment of the Pennsylvania State Police. It is Perkins' opinion that the State Police had two goals in mind during their interception of this bus. First, the officers remained on the bus after passengers reboarded in order to interview them and gain consent to search their bags. Second, the officers intended by their actions to force or coerce abandonment of bags by individuals. The latter premise is reinforced, continues Perkins, by the fact that a canine unit was escorted onto the bus in view of the passengers, thereby alerting them that a sniff

search would take place. Perkins summarizes that if it was the sole intent of the police officers to interview reboarding passengers, there was no point to the officers positioning themselves and the canine unit in plain view of the passengers as they disembarked; instead the officers intended to force passengers to abandon their bags by not reboarding the bus, especially those who may be transporting illegal drugs.

In Florida v. Bostick, 501 U.S. 429 (1991), the Supreme Court provided us with guidance on the question of whether a police encounter on a bus constitutes a seizure under the Fourth Amendment. The Court held that random searches of passenger buses, as with any other mode of public travel, conducted pursuant to a passenger's consent are not per se unconstitutional under the Fourth Amendment. Id. at 438-439. The Court further opined that in situations involving police

interdiction teams boarding passenger buses, freedom of movement is restricted by a factor independent of police conduct, that factor being one's status as a passenger on a bus. "In such a situation, the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter." Id. at 436. Under Bostick, the "reasonable person" test presupposes an innocent person. Applying the principles set forth by the Court in Bostick, we find that the district court did not err in denying Perkins' motion to suppress the bag.

While the Pennsylvania State Police interdiction team was performing its routine duties in intercepting the Greyhound bus, Perkins drew the attention of the police officers by his obvious and nervous reaction to their presence near the bus. Further, as the bus tickets reviewed by the officers indicated that none of the passengers was

ending the trip at the present location, Perkins even further piqued the curiosity of the officers when he could not be located at the truck stop and more so, when he did not reboard the bus after the rest period.

Officer Barber testified that he intended to interview Perkins and request permission to search his bag as the officer had done of the other passengers on the bus. When Perkins did not return to the bus and could not be located, the officer determined that the bag which the bus driver and other passengers identified as Perkins' was abandoned property. Barber removed it from the bus and searched it, discovering the cocaine. Ultimately, Perkins did admit possession of the bag.

We conclude that, considering the totality of the facts and circumstances, the court did not err in concluding that Perkins was no coerced or forced into involuntarily

abandoning his bag by the actions of the police officers.

III.

Perkins further contends that the district court erred in not granting his objections to the presentence report which challenged the addition of two criminal history points under section 4A1.1(c) of the United States Sentencing Guidelines. Perkins denies that the petit theft listed at Paragraph 26 of the Presentence Report ever occurred. In addition, Perkins states that as to the assault listed in Paragraph 29, he spent less than 2 hours in jail and was incarcerated only because he could not initially afford to post a bond. Therefore, Perkins asserts, he should have a Criminal History Category of II which corresponds to a period of 87-108 months imprisonment and not a Criminal History Category of III which

corresponds to a period of 97-121 months imprisonment.

During the sentencing hearing, the government presented a certified copy of the record in the May 29, 1986 petit theft and noted that Perkins had appeared before the Akron Municipal Court on several other occasions. Indeed, the offense in question was contained in the Summit County, Ohio, Adult Probation Presentence Report which was supplied to the United States Probation Office. Perkins did not offer any evidence to the contrary. Instead, he testified that he did not have any knowledge or memory of the incident. Consequently, we do not find any error by the district court in finding sufficient evidence to support the determination that Perkins had committed the petit theft and thus, is not granting Perkins' objection to Paragraph 26 of the Presentence Report and the subsequent addition of one

criminal history point relating to the offense.

Regarding the assault listed in Paragraph 29 and Perkins' contention that he serve a de minimis period of incarceration, the pertinent fact is not the amount of time Perkins served but rather that he was sentenced in regard to the assault. U.S.S.G. §4A1.1(c) states that "one point is added for each prior sentence not counted under §4A1.1(a) or (b)." The term "prior sentence" is defined in U.S.S.G. §4A1.2 (a)(1) as "any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense." In addition, Application Note 2 to U.S.S.G. §4A1.2 states that "criminal history points are based on the sentence pronounced, not the length of time actually served." Therefore, we do not find any error by the district court in not granting Perkins' objection to

Paragraph 29 of the Presentence Report and the subsequent addition of one criminal history point relating to the offense.

IV.

Finally, although Perkins asserts that the district court erred in declining to reduce his offense level by two levels based upon his alleged minor role in the offense, Perkins did not offer any supporting argument. Application Note 3 to U.S.S.G. §3B1.2 (mitigating role) states that "[f]or purposes of §3B1.2(b), a minor participant means any participant who is less culpable than most other participants, but whose role could not be described as minimal." The district court determined that no other participants were identified by Perkins as having had a role in the offense and as a result, denied Perkins' request. We do not find any error by the district court in this regard.

V.

Accordingly, we will affirm the judgment of conviction and sentence.

TO THE CLERK:

Please file the foregoing opinion.

/s/Carol Los Mansmann
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-7265

UNITED STATES OF AMERICA

vs.

TED RUSSELL PERKINS, II

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Crim. No. 94-CR-00213)
District Judge: Honorable James F.
McClure, Jr.

Before: BECKER and MANSMANN, Circuit Judges,
and SCHWARZER, District Judge.*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and

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* Honorable William W. Schwarzer of the United States District Court for the Northern District of California, sitting by designation.

was submitted under Third Circuit LAR 34.1(A) on June 6, 1996.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the district court entered on April 19, 1995 be and the same is hereby affirmed.

ATTEST:

/s/P. Douglas Sisk
Clerk

June 19, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	4:CR-94-0213
	)	
vs.	)	JUDGE McCLURE
	)	
TED RUSSELL PERKINS, II, Defendant	)	

MOTION FOR LEAVE TO PROCEED ON APPEAL INFORMA PAUPERIS

AND NOW, comes Ted Perkins, II, pursuant to F.R.A.P. No. 24 and requests leave to proceed on Appeal in Forma Pauperis for the following reasons:

1. I was the Defendant in the above captioned action.

2. On December 29, 1994 and January 3, 1995, I had a hearing on my Motion to Suppress the evidence seized from a black leather bag.

3. Said Motion was denied on January 5, 1995.

4. At jury trial on January 12 and 13, 1995, I was found guilty on Count One of a one count indictment.

5. Following a Pre-sentence Report and an addendum reflecting changes and Defense objections, I was sentenced on April 18, 1995.

6. My sentence was preceded by Defense objections as to the petit theft offense (Paragraph 26) which I did not remember for which I received one point.

7. Another defense objection was made to Paragraph 29, an assault charge, addition of one point, because I was incarcerated one day (the remainder suspended) and I was in jail less than one and one-half (1½) hours, §4A1.2(b)(2).

8. The last defense objection was to a two point reduction for my minor role in the offense.

9. I was represented through sentencing by Attorney Joseph M. Devecka. My sentence was ninety-seven (97) months, criminal history category III, offense level 28. My $50.00

assessment was waived because of my financial condition and earning capacity.

10. I still owe $1,100.00 to Mr. Devecka for the trial of my case.

11. I am also not able to pay Mr. Devecka for his help in preparing this Motion.

12. I am without funds to pay an attorney to represent me on appeal.

13. I wish to have this Honorable Court appoint counsel to represent me on appeal because I am not able to represent myself.

14. My only asset is the $10.50/week I make as a janitor at the Union County Prison where I am incarcerated.

15. I own a car which is a 1982 Oldsmobile which is worthless. I do not know its present location.

16. I have completed and attached an Affidavit which more completely presents my inability to pay the costs of my appeal.

17. I desire to appeal at least four (4) issues:

(a) Did this Honorable Court err in failing to suppress the evidence and in its findings of fact in failing to find that at all times a state police officer was present near the bus;

(b) Did this Honorable Court err in failing to grant Defense objections to Paragraphs 26 and 29, one point additions, which would have reduced my Criminal History category from III to II;

(c) Did this Honorable Court err in failing to grant Defense objections and determine that my role in the offense was minor reducing my offense level from 28 to 26; and

(d) The sufficiency of evidence at trial to convict. (The ineffectiveness of trial counsel if necessary.)

WHEREFORE, I respectfully request leave to proceed on Appeal in Forma Pauperis for the reasons stated in this Motion and the accompanying Affidavit, further I respectfully request that this Honorable Court appoint counsel to conduct my appeal.

Respectfully submitted,

Ted Russell Perkins, II
Union County Jail
103 South Second Street
Lewisburg, PA 17837

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	No. 4:CR-94-0213
v.	:	JUDGE McCLURE
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

O R D E R

April 28, 1995

BACKGROUND:

On September 20, 1994, a grand jury sitting in the Middle District of Pennsylvania returned a one-count indictment charging defendant Ted Russell Perkins II with distributing and possession with intent to distribute a controlled substance. A jury trial was held on January 12-13, 1995, after which the jury returned a verdict of guilty. Sentence was imposed on April 18, 1995.

Before the court are motions by defendant for leave to proceed in forma pauperis on

appeal and for the appointment of appellate counsel.

DISCUSSION:

Defendant's motion for leave to proceed in forma pauperis and affidavit in support thereof indicate that he should be allowed to proceed in that manner, and the motion will be granted.

As to the appointment of counsel, we note that all proceedings in this court were completed as of the date of sentencing. A motion for the appointment of counsel on appeal therefore is properly directed to the Court of Appeals.

Finally, we note that no notice of appeal has been filed, presumably due to defendant's present motions. The notice should have been filed within 10 days of the imposition of sentence. See Fed.R.App.P. 4(b). Since the motion to proceed in forma pauperis fulfills

the content requirement of a notice of appeal, see Fed.R.App.P. 3(c), and clearly states defendant's intention to appeal, the motion to proceed in forma pauperis will be construed as a notice of appeal.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Defendant's motion (record document no. 59) for leave to proceed in forma pauperis on appeal is granted in part and denied in part, as follows:

(a) defendant's motion is granted to the extent it seeks leave to proceed in forma pauperis;

(b) defendant's motion is denied to the extent it seeks appointment of counsel by this court, such denial being without prejudice to a motion for appointment of counsel by the Third Circuit.

2. Defendant's pro se motion (record document no. 60) for appointment of counsel is denied as moot.

3. Defendant's motion to proceed in forma pauperis is construed as a notice of appeal, and the clerk is directed to take action consistent with such construction.

/s/James F. McClure, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	4:CR-94-0213
v.	)	
	)	JUDGE McCLURE
TED RUSSELL PERKINS, II,	)	
Defendant	)	

MOTION TO SUPPRESS CERTAIN EVIDENCE

AND NOW, comes Ted Russell Perkins, II, by and through his attorney, Joseph M. Devecka, pursuant to F.R.Crim.P. No. 12(b) (3) and moves to suppress certain evidence identified below seized without a warrant for the reasons stated below:

1. On September 1, 1994, Pennsylvania State Police made a warrantless search of a Greyhound bus located at the Bestway Truckstop in Boggs Township, Centre County, Pennsylvania.

2. On September 1, 1994, Pennsylvania State Police made a warrantless seizure of a black leather bag from a Greyhound bus that

was the subject of a warrantless search at the Bestway Truckstop on September 1, 1994.

3. On September 1, 1994, Pennsylvania State Police Trooper Ernest W. Barber made a warrantless search of and seizure of a black leather bag seized as a result of warrantless searches and seizures as stated in paragraphs 1 and 2 above.

4. All of the warrantless searches and seizures made in paragraphs 1 through 3 above are the subject of this Motion to Suppress as are all actions of various members of the Pennsylvania State Police in conducting said warrantless searches and seizures in order to harass passengers into abandoning their property or appear to abandon their property due to harassment by authorities.

Evidence to be Suppressed

The following evidence and any and all evidence obtained as a result of the initial alleged illegal search and illegal seizure.

5. Black leather bag seized from a Greyhound bus on September 1, 1994 containing three (3) brick shaped objects wrapped in duct tape, a white T-shirt, a tan baseball cap, a hairbrush and hairpick, and short black hair found tangled among the hairbrush.

6. Hair samples seized as a result of the original warrantless seizure of the black bag pursuant to Pennsylvania State Search Warrant number H21675 including the results of any scientific tests conducted on said hair samples.

7. Statements made after the initial seizure of Ted Perkins to Pennsylvania State Police Officers at the Buck Horn Plaza as to his reason for being at the Truckstop, the reason he was waiting at the Truckstop as well as his personal items seized by the Pennsylvania State Police.

8. Statements made to DEA agent David Keith Humphreys by Ted Perkins, II on

September 16, 1994 while traveling from Centre County to Harrisburg, Pennsylvania.

Conduct of Pennsylvania State Police in Making the Warrantless Search and Seizure

9. The Pennsylvania State Police Troopers involved in the warrantless search of the Greyhound bus, the warrantless seizure of certain luggage, a black leather bag are, as far as can be determined at this time, the following (although there may be additional officers):

(a) Pennsylvania State Police Trooper Ernest W. Barber;

(b) Pennsylvania State Police Trooper James Sattazhan;

(c) Pennsylvania State Police Trooper Jack Felicita;

(d) Several (possibly more) Pennsylvania State Police Troopers not identified.

10. The Pennsylvania State Police Trooper involved as personally seizing a black leather bag and then searching the closed bag is believed to be Pennsylvania State Police Trooper Ernest W. Barber.

11. The Pennsylvania State Police had no specific information to believe that the Greyhound bus in question contained a passenger or luggage containing illegal controlled substances.

12. The Pennsylvania State Police did not observe Ted Perkins, II until he had stepped off the bus:

> [Perkins] . . . exited the bus in a groggy manner and sleepily stretched his arms and then froze for a split second. PERKINS looked bewildered and scared for a moment focusing on the narcotics canine being moved toward the bus. Pennsylvania Criminal Complaint Affidavit, Tpr. Barber.

13. The Pennsylvania State Police "team" intended to induce reactions in passengers exiting the bus, a purely subjective

evaluation, by stationing easily identifiable state troopers and drug dog in the plain (and certain) view of off-loading passengers.

14. Several (or more) Pennsylvania State Police Troopers boarded the bus after some passengers left knowing that there was a limited amount of aisle space and that a passenger may not reboard the bus with the police blocking the aisles and/or standing at the doorway.

15. At the time the Pennsylvania State Police boarded the Greyhound bus in question, two conditions existed:

(a) The Pennsylvania State Police were members of a narcotics interdiction unit and boarded said bus only with the intent of searching for and seizing illegal controlled substances; and

(b) No Pennsylvania State Trooper possessed a Greyhound bus ticket valid for the bus in question.

16. The Pennsylvania State Police Troopers remained on the bus in question or at the doorway of the bus in question as the Greyhound bus reboarded!

17. Before the Greyhound bus in question departed, Pennsylvania State Troopers reboarded said bus.

18. Before the Greyhound bus in question departed, Pennsylvania State Troopers seized the black leather bag, removed it from the bus in plain view through the bus door and then searched said luggage and seized its contents in a warrantless search and seizure.

19. After said warrantless search and seizure of the illegally seized black leather bag, Pennsylvania State Police Troopers reboarded said bus to question the driver and passengers.

20. After the reboarding and questioning that followed the warrantless search of the

black leather bag was concluded, the Greyhound bus was permitted to continue on to Cleveland.

21. It is the policy of the Greyhound Bus Company to have drivers "turn in" to ticket agents or other agents all carry-on baggage "left" on a bus at its final destination.

22. Pennsylvania State Police Troopers contacted no Greyhound official or representative to come to said bus to release said black leather bag.

23. It is the policy of the Greyhound Bus Company to hold carry-on baggage at the destination so that passengers may claim it.

24. Pennsylvania State Troopers did not ask for or receive permission from said bus driver to remove said black leather bag from said bus, but instead removed it under color of their own authority.

25. For the purposes of this Suppression Motion, Ted Russell Perkins admits to

possession of the black leather bag in question.

26. Ted Perkins, II, the Defendant, also states for the record that he held a valid ticket as a passenger of the bus in question.

WHEREFORE, Ted R. Perkins, II, respectfully requests that this Honorable Court suppress all evidence seized as a result of the warrantless search of said Greyhound bus, and/or seized as a result of the warrantless seizure and search of the black leather bag as illegally seized evidence together with all evidence seized as a result of the initial illegality and that the Government not use any of the said evidence in any manner in the above captioned or any other prosecution of Ted Russell Perkins, II.

The Government opposes the granting of the preceding Motion.

Respectfully submitted,

By:/s/Joseph M. Devecka
Attorney for Ted Russell
Perkins, II

111 Sowers Street, Suite 600
State College, PA 16801
(814) 234-5227

PA Attorney ID #29938

CERTIFICATE OF SERVICE

AND NOW, this 28th day of November, 1994, I Joseph M. Devecka, hereby certify that I have, this date, served a copy of the foregoing Motion to Suppress Certain Evidence by causing same to be mailed by U.S. mail, postage prepaid, addressed to the following:

George J. Rocktashel, Esquire
Assistant U. S. Attorney
Room 307 - Post Office Building
3rd & Market Streets
Lewisburg, PA 17837

/s/Joseph M. Devecka,
Attorney for Ted Russell Perkins, II

111 Sowers Street, Suite 600
State College, PA 16801
(814) 234-5227

PA Attorney ID #29938

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
vs.	:	No. 4:94-CR-213
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

TRANSCRIPT OF PROCEEDINGS

SUPPRESSION HEARING

Before: HON. JAMES F. McCLURE, JR.

Date : December 29, 1994; 9:30 a.m.

Place : Courtroom Number Two
Federal Courthouse
240 West Third Street
Williamsport, Pennsylvania

COUNSEL PRESENT:

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MR. ROCKTASHEL: Your Honor, we call Trooper Ernest Barber.

THE CLERK: Raise your right hand, please.

Be seated.

* * *

ERNEST W. BARBER, called as a witness, having been duly sworn or affirmed, testified as follows:

THE CLERK: For the record, sir, state your full name and spell your last name?

THE WITNESS: My name is Ernest W. Barber, B-a-r-b-e-r.

THE CLERK: Thank you

DIRECT EXAMINATION

BY MR. ROCKTASHEL:

Q Sir, how are you presently employed?

A I'm presently employed by the Pennsylvania State Police and I hold the rank of trooper.

Q And are you assigned to any particular unit or detail at the present time?

A Yes, sir. I'm assigned to the Bureau of Drug Law Enforcement, and am further assigned to the tactical narcotic team in Harrisburg.

Q How long have you been a trooper altogether?

A I joined the state police in 1991.

Q And prior to that time did you have any experience in law enforcement?

A Yes, I was. I was a local police officer since 1987.

Q How long have you been assigned to the tactical narcotics team?

A For almost a year now.

Q Now, in the course of your duties with the tactical narcotics team, were you working on September 1st, 1994, in that capacity?

A Yes, sir.

Q And what were your particular duties or assignment on that date?

A On that date myself and a team consisting of other troopers were assigned to an interdiction detail targeting buses at the Best Way Truck Stop in Centre County.

Q Now, in the course of your career as a state trooper, how many arrests have you made for narcotics offenses?

A During this past year, probably approximately about twelve. Twelve.

Q Were they all in connection with interdiction efforts?

A Some with interdiction. Others were regular undercover work.

Q Now, have you ever had occasion to testify before in any court either in Pennsylvania or elsewhere on the issue of narcotics trafficking, et cetera?

A Yes, I have.

Q On approximately how many occasions?

A This year, approximately nine or ten.

Q Now, have you participated in the execution of any search warrants that resulted in the recovery of narcotics, including cocaine?

A Yes, I have.

Q Approximately how many?

A During my career as a local officer and this year, maybe two or three times.

Q And in the course of your duties, both as a local police officer and as a state trooper, have you had occasion to talk to users of drugs or others in the drug world regarding the packaging, sale and distribution of drugs, including cocaine?

A Yes, I have.

Q Now, you talked about interdiction efforts at the Best Way Truck Stop. Would you explain for the Court what that means and what's entailed in an interdiction activity,

specifically at that drug -- at that truck stop?

A Certainly. When we interdict buses at the Best Way, it's a unique situation in the interdiction of buses, in that buses will stop for a period of anywhere from 45 minutes to an hour. That particular location is a place where the bus driver takes a meal and takes a scheduled break and rests for about an hour.

Once the bus rolls up, we observe people getting off the bus, debarking the bus and their actions. We watch basically environment, what's going on. We check the bus for any hidden contraband, be it drugs, guns, whatever, inside, you know, the visible areas. We eventually get on the bus again or interview people outside of the bus and gain consent searches, if they'll allow that, searching for contraband.

Q Now, with respect to actual drivers themselves, what investigative activities do

you undertake with respect to them to find out information that you might use in the course of interdiction activity?

A This drivers - when they stop, we generally engage in a general conversation with them. How the trip was, any problems, anyone on the bus giving you a problem. And we also ask for their tickets. They provide a series of tickets that the people have to board the bus with. And during the course of our interdiction, the troopers will look at these tickets to see where the people are originated from and where their destinations are.

Q And what kinds of things does your -- strike that. What kinds of things are being looked for in the course of the review of the tickets?

A Trooper Sattazahn is definitely the ticket man on our team, but when I look at them, I'm looking for tickets that were

purchase a short time before departure. I'm looking for tickets from source areas, like New York City and going to other larger cities. I'm looking at tickets that don't have names on them or are suspicious to me.

Q Now, the Best Way Truck Stop is on Route 80, I think you testified to; is that correct?

A It's just off Route 80. It's actually on State Route 150.

Q Now, how would you describe geographically that particular area where the bus stop is located?

A That location is a truck stop. It's a restaurant, and the environs around that truck stop are fields and corn fields. It's very rural.

Q Now, other than the Best Way Truck Stop, is there anything else in the vicinity of that particular location?

A Yes, sir, there is. Just -- I believe it's west of the truck stop, there's a Day's Inn Motor Lodge, and also adjacent to that is another truck stop called the Buckhorn Truck Stop.

Q Now, are they on the same side of Route 80?

A Yes, they are.

Q What side is it, eastbound or westbound? Let me ask you this question. How does Route 80 run, for the record?

A East and west.

Q And Best Way Truck Stop is that on the east side or the west side of the highway?

A It's actually the north side.

Q The north side, which would be the westbound lanes; is that correct?

A Correct. It would be closest to the westbound lanes.

Q And the other facilities you talked about, would they be on the same side of the highway?

A Correct.

Q Now, what time did you go to the Best Way --

THE COURT: Excuse me. Just before you do that. Is this -- just so I could locate it, the Bellefonte exit off Route 80? Is it the exit before Milesburg?

MR. DEVECKA: It is the Milesburg exit, Your Honor.

THE COURT: It is the Milesburg exit.

THE WITNESS: Don't know the exit number off the top of head.

THE COURT: Isn't that Route 220 out at Milesburg?

MR. DEVECKA: It is 220. It exits onto 220, and Milesburg is an exit 150 off 220.

THE COURT: Well, it's the Milesburg exit. That is all I need to know.

THE WITNESS: It's the same road, Your Honor, that the barracks on up there.

THE COURT: Go ahead, Mr. Rocktashel. I'm sorry.

BY MR. ROCKTASHEL:

Q Would Milesburg be the nearest borough or village or town to the exit where the Best Way Truck Stop is?

A As far as I know, it is.

Q Is the Best Way Truck Stop near the exit? Whatever it is designated, according to the route?

A It's about one minute from the exit.

Q Okay. Now, what particular bus lines stop for these 45 minute rest stops that you have described? Any particular lines?

A I have always seen Greyhound buses there. I am not -- I have no knowledge of any other bus stopping there.

Q Now, the Best Way Truck Stop, is that a bus terminal, per se, like a inter-city bus terminal might be characterized, or does it have other facilities there as well?

A No, it seems to me that that is generally a truck stop. Greyhound stopping there is unroutine to that location.

Q Now, as a truck stop, what kind of facilities are there at the Best Way Truck Stop?

A They have motel rooms, showers. They have a restaurant and kitchen area. And they also have a -- like a mini mart type of store where you can go and buy things that you may need.

Q Like a convenience store?

A Correct. They also have a game room there.

Q Now, on September 1st, 1994, what time of day was it that the interdiction team went to that location approximately?

A I would say probably around -- it was either four or six o'clock, I believe. The schedules of the buses change every few months, so the times that we arrived there changed with the schedules.

Q Now, when you arrived there, were members of the team in uniform or plain clothes?

A When we first arrive there, we're generally in plain clothes.

Q At any point in time do you use any kind of apparel or other identifying material to signify who you are?

A Yes, sir, we do. Once the bus arrives, we either wear hats, some guys display their badge, and other members display jackets that say -- either have a state police patch on the shoulders or say state police on them. We want to show the people that we are, in fact, the state police.

Q Now, you indicated that some members wear hats. Does that hat in any signify that you're with the Pennsylvania State Police?

A Yes, it does. It has our patch right on the front.

Q And I think when you talked about some members wearing their badges or identification, you reached to the chest area. How are the badges displayed?

A I actually have mine in my pocket. I can display it. Generally they're on a chain and they go around your head. And they hang loosely around the neck and they can be displayed to people who you are talking to, so they can see that you are, in fact, you know.

Q So for the record, it hangs about midway down the necktie that you're wearing; would that be fair to say?

A About breast level. At the breast line.

Q Now, let me direct your attention specifically to the time of 9:45 p.m. What happened on that particular date that brings us to Court today?

A We were involved in an interdiction detail there at Best Way, and we interdicted a westbound bus that was running from New York to Cleveland during the course of that -- of the bus stopping, we donned apparel. I believe I had on a police jacket. Other members either had hats, jackets or badge or some sign of authority displayed. We were watching the people debark the bus. I was stationed near the door where these peoples would step off the bus.

Q Let me stop you right there. First of all, based on your experience and training, what's the significance of the fact that this bus was westbound from New York to a point west? I think you indicated Ohio, is that correct?

A Cleveland.

Q What is the significance of that particular route and direction of travel?

A It's been our experience there at the bus stop and from past interdictions, that drugs are being run westbound from New York City to other larger cities.

Q What is the significance of New York City?

A It seems to be that that is a distribution point or a place where narcotics can either be bought, you know, or transported from.

Q Now, have you participated in interdiction efforts prior to September 1st, 1994, that resulted in a recovery of any kind of drugs, including cocaine?

A Yes, I have.

Q And could you ex -- describe for the Court typically the direction of travel of the buses on which cocaine or any other drugs were

found and also a point of origin and the direction of travel?

A Certainly, When we work westbound buses, we generally seize cocaine or heroin, and that -- in most times as far as I know and have been told by our lab, it's in a pure book form. We often seize 250 to a thousand grams at a time of either cocaine or heroin. We have seized up to four kilos of cocaine westbound, and over a kilo of white heroin in a time traveling westbound.

Q And what were the points of origin of those particular buses?

A Each and every time it was either New York, meaning the city, Newark, New Jersey, right across the river from New York.

Q And are you familiar with the bus routes out of the Port Authority in New York City and the direction they take once they leave the city and cross the river into New Jersey?

A Generally, I believe it's westbound. Other than that, I am really not that familiar with the inter workings of the New York network.

Q Is Newark one of the stops just outside of New York City?

A Yes, it is. On some bus routes it is.

Q Now, you indicated that you positioned yourself at the door of the bus at approximately 9:45 on September 1st; is that correct?

A That's correct.

Q Where exactly was the bus oriented with respect to the truck stop and the buildings you've described previously, the other facilities?

A The bus stopped approximately directly in front of the entrance way to the truck stop. Meaning the store area and there's what's called a fuel desk in front of this truck stop where there's usually two or three

fuel people working that process truck driver orders and fuel and things like this. And that's generally where all these buses stop, directly in front, so the people can walk directly from the bus into the truck stop or restaurant.

Q How far would one have to walk from the bus on the night, where you were oriented, near the doorway, to the actual entrance of the truck stop facilities?

A I would say approximately 50 feet.

Q Now, are there any barriers or restrictions before you get to this actual entrance to the location?

A Not to the store or restaurant, no.

Q Can the bus pull right up to the doorway?

A Yes, it can.

Q Now, what was the purpose of you standing where you were at that particular time?

A When buses pull up, I like to watch the people debark, and I like to watch their reactions or things that they may do when they see me or someone else from the team. Plus I just like to look at the people and see what the people look like.

Q And what were the other members of the team doing at that time while you were watching the behavior of the people getting off the bus?

A There were other troopers involved to the extent that they were watching the people. Generally our team also watches the interior of the bus to see who's placing packages where, who's placing bags where. We also generally have a canine unit, a canine team with us. They are preparing a canine to check the bus. And we also have troopers that just mill around and listen to what's going on with the people and --

Q Was there a canine unit assigned to your team on this date and time?

A Yes, there was.

Q And who was the officer responsible for handling that dog?

A That would be Trooper Jack Felicita.

Q While you were observing the behavior of the people getting off the bus, what did you see that was unusual, if anything?

MR. DEVECKA: Objection. Leading. Well, he added anything. If anything. I withdraw the objection.

THE COURT: Overruled.

THE WITNESS: As I watched the people get off the bus, it was dark out, so people to me appeared to be tired or groggy, as if they had been resting. I observed a tall, thin black male getting off the bus and stretching and appeared to me to be tired, at which time he noticed my presence.

BY MR. ROCKTASHEL:

Q Now, when you say noticed your presence, what did he do -- what did you see him do you that causes you to describe that behavior?

A He got a very -- almost bewildered look or expression on his face and he basically stopped. And he's looking around. He looked at me. He looked at the dog and the canine, and he immediately attracted my attention to his actions and his reaction.

Q Where was the canine located with respect to where you were at that point when this slender black male got off and looked in your direction and in the direction of the canine unit?

A Canine was proximately positioned between the bus and the truck stop.

Q Could you estimate in terms of feet or distance how far away he was from, say, the bus, approximately?

A If I had to estimate, I would say maybe 30 feet. Twenty feet.

Q But it was a distance, a further distance away from the bus than where you were; is that correct?

A That's correct.

Q And how close were you to the doorway where the passengers were getting off, including the one you've just described?

A I would say approximately 10, 15 feet.

Q And you were wearing a jacket with a state police patch, is that correct?

A That's correct. I had a patch on each shoulder.

Q And do you recall whether or not you were wearing your badge as you've indicated they're sometimes displayed?

A I don't know if I was or I wasn't.

Q Now, do you see that individual that you described getting off the bus groggily and

looking immediately in your direction and the direction of the canine unit?

A Ye-, I do.

Q And would you point to him, please, and identify him by some article of clothing, if you would?

A The Defendant would be Mr. Perkins. He's the gentleman who stepped off the bus. He's wearing a white shirt and looks like a maroon and tan tie.

Q Indicating the Defendant, for the record.

How did he come off the bus? Was he among the first that came off or one of the last passengers that came off?

A He was toward the front of the line, if not toward the middle. He wasn't the first, but he definitely wasn't the last. He debarked sort of soon.

Q Now, you indicated that at some point he appeared groggy, is that correct?

A Sleepy, groggy, stretchy -- stretching.

Q Now, at that -- at the point he first noticed you or you saw behavior that indicated that he saw you, where was he? Was he on the bus or had he stepped off the bus at that point?

A He had stepped off and probably walked 10, 15 feet.

Q Now, were there other passengers behind him getting off the bus?

A yes, there were, as well as in front of him.

Q What did he do, if anything, after he looked in your direction and looked in the direction of the canine unit?

A He looked startled. He looked very, very concerned. More concerned than other people.

MR. DEVECKA: I would object to the conclusion of concern. I would like him to

describe his physical appearance rather than a conclusion.

THE COURT: Sustain the objection.

BY MR. ROCKTASHEL:

Q What did you see him do or how did you see him react that causes you to use the term -- description startled as did you just now?

A Well, he basically stopped dead in his tracks and looked upset to me.

MR. DEVECKA: Objection. Conclusion, upset.

THE COURT: Sustained.

BY MR. ROCKTASHEL:

Q What did you see about his appearance or demeanor that causes you to use the term upset in terms of facial features, body language, if you will, et cetera?

A Yeah. The state that he went from, the tired, stretchy state, to all of a sudden freezing, getting wide eyes, almost staring in some type of emotional state; that I could see

the change of state in emotion from tired to what to me appeared to be concern.

Q And how did that coincide, if at all, with his looking in your direction and the direction of the canine unit?

A When he noticed us, that's when his emotional stated changed.

Q Now, you indicated that Trooper Felicita was there with the canine unit. How was that trooper attired that day?

A I don't recall. I don't recall how he was attired.

Q You don't know whether or not he was in uniform, for instance, or in plain clothes?

A He wasn't in uniform. Sometimes I believe Trooper Felicita wore a jacket. Other times he just wore civilian clothes.

Q And what kind of dog does he have, do you know, offhand?

A I believe it is a black labrador.

Q What happened after -- as you put it, the Defendant appeared startled, in your words?

A Well, at that point he sparked my curiosity and interest, based on his reaction. And I began to watch Defendant Perkins. And he proceeded to just basically stay in front of the truck stop, watching us to see what we were doing.

Q What, if anything, did any of the other debarking passengers do once they got off the bus?

A It's been my experience that debarking passengers generally go either to the restaurant, to the bathroom, inside the store to buy, you know, refreshments of some type.

Q What did you see the passenger -- other passengers do on this particular occasion?

A Just those things. People went in to eat. People went in to the bathroom. People

milled around the store on the inside of the truck stop.

Q Now, after the passengers got off the bus, was the bus locked up at all?

A Absolutely not. No, the bus is always open.

Q Where was the driver during that period?

A The driver was inside the truck stop. He went to the restaurant and I believe he had some type of dinner.

Q Did you know whether or not all the passengers actually got off the bus once the bus stopped?

A In this case one passenger stayed on the bus.

Q Now, you indicated that Mr. Perkins stayed in front of the truck stop area. Did you observe him continuously during the period of time he was in front of the truck stop area?

A As best as I could. We have to focus attention on other people as well as each other for safety.

Q Would you describe for the Court what, if anything, he was doing while he was in front of the truck plaza?

A Mr. Perkins was pacing. He seemed to be pacing up and down the sidewalk, the sidewalk directly in front of the restaurant and truck stop. He would pace toward the far west end of the sidewalk and then he was looking around nervously, and then paced back.

Q And when you say nervously, what did you see him do that causes you to use that description of what he did?

A He paced to the end of the sidewalk and was looking around into the wooded area directly west from the rest stop. And he was looking, you know, just scanning the area, looking around. I don't know how to put into

words. You know, nervously, but to me he looked like he was looking nervously.

Q What, if anything, did you do next in the course of your interdiction activities?

A The next step for us was to do tickets, check the tickets, check the bus, check the common areas, like the bathrooms and aisles and things like that, as well as walk the canine onto the bus.

Q Now, was the canine walked on the bus in this particular case?

A Yes, it was.

Q Now, during this period of time that these other interdiction activities were being undertaken, where were you positioned? Were you still outside the bus or were you someplace else?

A I was outside -- inside as well as outside and on the bus. So I was basically all over the place.

Q Did you ever go into the truck stop itself or any of the related facilities, like the convenience store or the rest rooms, et cetera?

A Yes, I did.

Q Now, were you ever able to chat with or talk to Defendant Perkins during the period of time that the bus was stopped at the truck stop?

A No, I was not.

Q And why not?

A Well, it didn't arise to the point where I wanted to approach Mr. Perkins, and eventually I lost track of him and he fled.

MR. DEVECKA: Objection to the conclusion, fled. Lost track of him.

THE COURT: Sustained.

THE WITNESS: He left the truck stop and was unable to be located.

BY MR. ROCKTASHEL:

Q Now, how did you determine that he was not in the vicinity of the truck stop where you had seen him pacing nervously, for instance?

A Well, he was always in the front area watching our actions. As we continued on with our routine that we perform while interdicting the buses, I decided to check on Perkins to see where he was at and I couldn't locate him.

Q Now, what information, if any, was communicated to you by any of the other troopers with respect to Defendant Perkins?

A Trooper Sattazahn had checked tickets and he found an interesting ticket that was bought from Newark, New Jersey, and was heading to Cleveland.

Q When you say an interesting ticket, what if anything was interesting from the perspective of what you were assigned to do that day?

A Well, we know from looking at tickets that people will travel from New York and Newark to Cleveland, and based on even arrests we have done up there, they transport, you know, drugs or contraband. And it seems to me that these people buy their tickets just before the bus will leave in order to avoid detection or for whatever reason.

MR. DEVECKA: Objection. No foundation for the statement of it seems to me they buy them just before they leave.

MR. ROCKTASHEL: You Honor, I think it will be connected up. I don't see the need to piecemeal the testimony. But if the Court --

THE COURT: I'll sustain the objection as to the comment on it.

BY MR. ROCKTASHEL:

Q Let me ask you this. In your experience working at this particular location doing drug interdiction activities, have you ever seen situations where you recovered drugs

and a ticket was purchased either shortly before the departure time of the bus or shortly thereafter?

A Yes.

Q And was there anything along those lines that attracted your curiosity about the ticket that was related to you by Trooper Sattazahn?

A Yes, there was. The departure time on that particular ticket from Newark was for six p.m., and I believe the ticket displayed a sale time of 6:04 p.m., which was four minutes after the scheduled departure.

Q Now, based on your experience and training in conducting interdiction activities, the -- particularly at bus stops or bus terminals, what significant, if any, is there to the fact that people will purchase tickets shortly before the departure time or shortly thereafter in situations where you've actually recovered drugs?

MR. DEVECKA: I'm going to object to that. He's restricting the set of tickets to those where they've actually recovered drugs, and there is no way of knowing how many people who don't carry drugs purchase their tickets just before the bus left.

THE COURT: Well, I think that's argumentative. I mean you can certainly make that argument, however, this bears on this hearing, which I'm not yet certain; but I'll overrule the objection. You can have this opinion on that.

BY MR. ROCKTASHEL:

Q In your opinion and in your experience and training, what significance is this last minute purchase, or shortly after the departure time, purchase of tickets?

A To me it's a good indicator that there's a possibility that someone is carrying a controlled substance or contraband.

Q And why would one who is carrying a controlled substance or contraband want to purchase the ticket at the last minute?

A Because that person does not want to be --

MR. DEVECKA: Objection. He being asked to speculate about what the person is thinking when he purchased the ticket.

MR. ROCKTASHEL: I'll withdraw the question or rephrase it.

BY MR. ROCKTASHEL:

Q Based on your experience and training in interdicting drugs at the bus terminals, have you encountered this technique of purchasing tickets at the last minute?

A Yes, I have.

Q And in the course of your duties, have you ever debriefed, for instance, confidential informants or other officers who have encountered a similar situation?

A Other officers, yes.

Q And what have they related to you?

A Other officers involved in interdiction have related to me that not only with bus tickets, but as well with airline tickets and things like that, that they are bought at the last minute.

Q Now, did there come a point in time where the bus readied itself for departure?

A Yes, it did.

Q When, approximately, was that? Can you give us an idea in terms of the time from the time when you had started at 9:45 p.m.?

A I would say probably 45 to 50 minutes later.

Q And is that the normal time period when that particular bus on that route begins to have its passengers reenter the bus for departure again?

A That's correct.

MR. DEVECKA: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: That's correct. Each bus -- each Greyhound bus that stops there, in my experience, and every one that I've interdicted there stops for at least 45 minutes there.

BY MR. ROCKTASHEL:

Q What if any interdiction or investigative activities were undertaken around this bus at the time the bus was scheduled to depart?

A The people reboard the bus. And that's generally done upon the beckoning of one of the fuel people. They'll get on the PA and say, the bus going to Cleveland, the Greyhound bus, your bus is ready. Please board at this time.

Q Is there a PA or public address system at this particular location?

A Yes, there is.

Q And do you know which areas of the facility it's broadcast?

A I know it's broadcast to the store area and I believe the restaurant.

Q Was there a determination -- strike that. During the process of departure, what if anything did you notice unusual or out of the ordinary?

A We were missing a person, a rider, one of the people off the bus was missing.

Q How did you determine that?

A Well, I determined it because it happened to be the person that I was watching.

Q And who was that person?

A That was Mr. Perkins.

Q And around departure time where the departure was announced over the public address system, did you see Mr. Perkins in the vicinity of the bus?

A No, sir, I did not.

Q Was the bus itself checked on the inside to determire where Mr. Perkins might be?

A The bus was checked, as well as I personally checked the restaurant, the game room, the store, hallways and the upstairs shower area of the entire bus stop.

Q Now, based on experience with that particular truck stop, why did you check those particular areas?

A Well, just to make sure he wasn't in the building. We have people -- people have failed to get on bus in the past, and in the past -- and we know that we have to check the whole area to try to find them as best as we can.

Q Now, on these occasion where people have failed to get back on the bus, where have you located them, if anywhere?

A Sometimes they've been located generally, I believe, it is west of the truck stop, either in the marsh area or you end up chasing people into the marsh area.

Q Now, if they're located on the truck stop grounds themselves, where do you locate passengers when they're late in getting back on the bus? I'm not talking necessarily about situations where people are carrying drugs, per se, but just in general.

A Generally they're either waiting in line to check out or in the restaurant or sometimes playing probably a game or something.

Q When you say waiting to check out, what are we talking about?

A That would be --

Q Pay at the restaurant?

A Either at the restaurant or in the store area. Buying sodas or candy bars for the trip.

Q Now, when you check these kind of areas in the truck stop facility, the restaurant, the bathroom, the store, the restaurant, et cetera, did you locate Defendant Perkins around departure time for this bus?

A No, sir.

Q Could you hear the departure being announced during the period of time when the bus was scheduled to depart?

A I don't know if I heard it this time or not. I believe I was actually outside during this time.

Q Now, did there come a point in time when any members of the interdiction team, including yourself, entered the bus and talked to passengers prior to its actual departure?

A Absolutely. We do that with each bus. Once the people are back to the bus, two, sometimes three troopers get on the bus and

interview passengers, and our goal there is to gain consent to look in bags.

Q Now, was that done in this particular case?

A Absolutely.

Q And do you know who actually went on the bus to inquire of these bus passengers, ask them questions and inquire whether or not consent could be had to look inside their belongings?

A Yes, sir. There was myself, Trooper Sattazahn as well as Trooper Felicita, I believe that canine handler also boarded the bus without the dog.

Q Now, let me ask you this. How is that typically done and how was it done in this particular case?

A Typically we have a trooper that will walk to the back of the bus, and I like to work the front of the bus. And sometimes if we have an extra trooper to do interviews,

that trooper will sometimes start in the middle area of the bus. And we basically identify ourselves to the person we want to talk to. We're very straight forward.

A typically conversation for me would be, sir, my name is Randy Barber, a trooper with the Pennsylvania State Police. I'm here, I'm trying to interdict the flow of drugs or contraband or guns that's going from New York to Cleveland or Detroit, or whatever other city the bus happens to be running to, Chicago. And I tell them that it's been my experience in the past I've been successful finding drugs on these buses. And I say, would you mind if I looked in your bag, you know. I'm very up forward and up front with them. And generally 99 percent of the time the people let me search.

Q Now, on this particular occasion, September 1st, 1994, did you actually inquire of any people in the manner you've just

described, whether or not you could look inside their bags that they had inside the coach?

A Absolutely.

Q And did anyone comply with your request?

A Everyone that I have asked to search there has given me permission, save two people, if that, in the past year.

Q On this particular occasion, did people give their consent to look inside the bags?

A Absolutely.

Q Now, before we go any further with this phase of the interdiction, let me ask you to describe this particular Greyhound bus that you were on at approximately 9:45 or within that 45 to 50 minute time frame.

A Okay.

Q How is it set up on the inside?

A It -- to me it seems like it's a regular sized bus. There is the driver on the typical driver's side position. Behind the driver's a row of two seats. And on what would be a passenger side is a row of two seats.

Q Now, is there any kind of storage facility for luggage or personal belongings on the bus?

A Yes, sir. The inside compartment of the bus itself has two overhead storage racks that people can put their baggage on.

Q Now, are these racks open or do they have any kind of compartment or anything along those lines?

A On this bus they were open.

Q So you would simply set your bag up on the shelf on the rack and would it sit there, and won't be enclosed by any door or compartment or anything like that; is that correct?

A That's correct. Although some people also store their bags on the floor as well as just lay them on the seat.

Q Is there -- strike that. Was there room under the seats on this particular bus where one could, for instance, stow a bag like they would on an airline or something along those lines?

A Yes, there was.

Q What happened during the course of interviewing the passengers on this particular evening?

A Part of the interview process is to check the ownership of the bags. I'll walk down an aisle and ask a person, you know, sir, this bag is over your head. Is this your bag? And they say yes. Then I ask them, you know, for the permission. During the course of the interdiction --

MR. DEVECKA: I'm going to object to his testimony as to what a passenger told him

concerning this particular investigation as hearsay.

MR. ROCKTASHEL: Your Honor, hearsay is admissible at a suppression hearing, particularly where it's a suppression hearing relating to conduct of the police, what people tell them is, of course, something that informs their conduct in doing certain things, and it's perfectly relevant in this situation to determine whether or not the conduct was lawful or this bag was abandoned.

THE COURT: I agree. Objection's overruled.

BY MR. ROCKTASHEL:

Q In this particular case, what did passengers tell you when you inquired about who owned a particular bag that might or not be over their head?

A The passenger told me that he didn't own it.

Q Did there come a point in time when you ascertained that there was some luggage that did not have an owner on the bus?

A Yes, there was.

Q Would you describe how that was determined?

A During the course of our interdictions we tried to verify ownership of each individual bag as best we can. On this particular bus there was a bag that turned up with no one claiming ownership. The particular bag was in the upper third of the bus on the passenger side and was laying on the seats.

Q Now, what information did you receive from either the passengers or any other person, including the bus driver, concerning whose bag this was on the seat?

A There were conversations held between the bus driver, myself occasionally and Trooper Sattazahn. The bus driver and Trooper

Sattazahn had exchanged conversation regarding the ticket, and the ticket -- I'm referring to the Newark ticket that was purchased at 6:04.

MR. DEVECKA: I'm going to object again to the hearsay from the bus driver.

THE COURT: Overruled.

THE WITNESS: The bus driver --

BY MR. ROCKTASHEL:

Q Did the bus driver tell you and Trooper Sattazahn?

A Correct. That there had been a tall, thin, black male in a black jogging suit that had held him up at Newark because of this bus ticket, and the gentlemen had stuck out in the driver's head because of this.

Q Now, this individual that he described, how did that person -- how did the bus driver's description compare with the Defendant that you saw getting off the bus groggily and then suddenly appearing startled?

A This driver indicated that it was a tall, thin, black male wearing a black jump suit. And that matched the description of Mr. Perkins, who had exited the bus with a black nylon running suit.

Q Did the bus driver indicate to you and Trooper Sattazahn where the Defendant had been sitting on the bus?

A Yes, he did. He indicated that Mr. Perkins was in the upper third of the bus and directed us to a seat on the bus, on the passenger side of the bus.

Q And were there any bags on that seat or in the vicinity of that seat?

A That's where the black bag that did not have an owner was located.

Q What, if anything, did the bus driver tell you or the other troopers concerning the bag that was on the seat where he indicated the male matching the Defendant's description had been sitting?

A Right. The driver indicated to, I believe it was Trooper Sattazahn, that the person who had held him up at Newark carried on this black bag.

MR. DEVECKA: Excuse me, Your Honor. May I have a continuing objection to all matters of hearsay told to these officers either by the driver or passengers, rather than objecting?

THE COURT: You may, and they're all overruled.

MR. DEVECKA: I understand.

THE COURT: I don't think there's any basis for that objection in a hearing like this. Go ahead.

BY MR. ROCKTASHEL:

Q What, if anything, did you learn from other passengers on the bus concerning the owner of this black bag?

A At that time where we discovered the bag had no ownership, I myself asked the

person directly to the seat across that, you know, if that was their bag. They said no. And they related to me that there was a tall, thin male, black male that had, you know, been sitting there and that he, you know, didn't come back. He didn't return.

Q He indicated there was a passenger that didn't leave the bus during the rest stop. Do you know where that person was sitting with respect to the seat where the bag was located and where the other passengers indicated that the male matching the Defendant's description had been sitting?

A That was an older woman, I believe, and she was sitting directly in front of the seat where the bag was located.

Q And did you discuss with her -- or did any other troopers discuss with her whose bag that was?

A I didn't. I believe she was foreign.

Q Meaning that she didn't speak English well?

A I believe so. I'm not a hundred percent certain on that, but I didn't talk to her.

Q Did any of the passengers in the vicinity of the bag or the seat where the bag was located indicate that they owned the bag or it was one of their belongings?

A No one claimed the bag. I asked everyone specifically in that area if they owned the bag or knew who did.

Q At that point do you know where the Defendant was?

A No, sir.

Q And with respect to when you had looked in the areas of the truck plaza for the Defendant, when had the bag -- this unclaimed bag, so to speak been located?

A The bag was located probably less than ten minutes before the bus was scheduled to pull out.

Q And when did you attempt to ascertain the whereabouts of the Defendant with respect to when -- inquiry was made of the passengers and the driver about the bag?

A I'd actually tried to find Mr. Perkins prior to that when the people boarded, and I know that he did not board. I was curious. And I also tried to ascertain his location at that time. Once the people boarded and he wasn't there, you know, I became very suspicious and thought possibly there was something interesting on the bus.

Q Let me ask you this. This bag that you're referring to, would you describe it for the Court in terms of its appearance and composition, et cetera?

A It's a large black leather bag. It's leather. It's got numerous zippers and

pockets. I believe there's a pocket on each side outside, round portion of the bag. And there's an overhead zipper on top of the leather bag. It's a nice leather -- black leather bag.

Q I show you a box of evidence and I ask you to open it up, if you would, please.

MR. ROCKTASHEL: Your Honor, it's approximately 20 of one. Were we going to work until 1:00?

THE COURT: Well, I was only going to go about another five minutes or so.

MR. ROCKTASHEL: Okay. I just want to know in terms of how much I should get into this.

THE COURT: Okay. If you want to stop now, it doesn't really matter. We will take about an hour's time so that people can have an opportunity for lunch, and wherever you think is a good time to stop.

MR. ROCKTASHEL: Thank you.

BY MR. ROCKTASHEL:

Q Allow me to direct your attention to what's been marked as Government Exhibit 2.0. Could you just identify -- tell us what that is for the record?

A This is the black leather bag that I just described as being the bag that was located on the Greyhound bus in the area behind the woman that wouldn't get off the bus. And which was the bag purported to myself and Trooper Sattazahn to be the one carried on by the black male from Newark.

Q As related to you by the other passengers and --

A And the bus driver.

Q -- and the bus driver. Other than talking to the passengers in the vicinity of the bus about this bag, Exhibit 2.0, and the bus driver, did you undertake any other

efforts to determine who owned the bag, if anyone, on the bus?

A Well, we did the obvious. We checked for name tags or any signs of identification on the bus. Other than that, we just asked people in the vicinity of the bag as well as check the entire bus for ownership. Generally when -- or I'm sorry. Most of the time that I know of, or every time that I've been involved with an abandoned bag, we hold it up to the bus and we say --

MR. DEVECKA: Objection to the conclusion of abandoned bag.

THE COURT: Overruled. He considers it to be such. Go ahead.

THE WITNESS: We hold up the bag that no one -- no one claims and display it, you know, visually for everyone to see and we ask if this is their bag.

BY MR. ROCKTASHEL:

Q Now, did you do that in this particular case on September 1, 1994?

A Yes, we did.

Q And what response, if any, did you get from the passengers on the bus, indicating whether or not anybody claimed the bag?

A We got a negative response. No one claimed ownership.

Q Now, this seat where that bag was located, did that have an overhead rack above it as well as -- strike that. Did it have an overhead rack above it just like the other seats on the bus?

A Yes, it does. The overheads run from the length of the entire bus.

Q And it did run across the top of the seat where this particular item was found?

A Yes, sir, it did.

Q Now, was the bag under anything or was it displayed openly?

A The bag was displayed pretty much in its present state, just laying on the seat. The seats are double seats and it was just laying right on top of the seat.

Q Did you have to move anything out of the way to get to the bag?

A Absolutely not.

Q After you held the bag up and displayed it and determined that no one was claiming the bag, what did you do next?

A We walked the bag off the bus and opened it.

Q And at that point in time, why did you open it?

A We couldn't find an owner.

MR. DEVECKA: Objection to the term we unless he identifies the other parties.

MR. ROCKTASHEL: I think it's clear.

THE COURT: I assume he means himself and the other troopers. There were three or four of you there, is that right?

THE WITNESS: Yes, sir.

THE COURT: Overruled.

THE WITNESS: Myself and the other troopers, as in the past when we find bags that lack ownership, walk off the bus and we open it.

BY MR. ROCKTASHEL:

Q And did you open this particular exhibit, Exhibit 2.0?

A Yes, we did.

Q And what did you find inside, if anything?

A Inside we found a white T-shirt, a brown hat, there was a brush inside, a hair pick, and there were also three square packages over wrapped with duct tape, what I suspected as cocaine.

Q I'm going to show you what have been marked for identification as Government's Exhibit 5.0 and 5.1. Would you identify what they are, please?

A. Yeah. These were the over wrapped duct taped packages that we found inside of this particular black bag. Also in the photograph in the background you did see the actual -- this particular bag.

Q And those are the duct taped packages that you found when you opened that bag, is that correct?

A That's correct.

Q In addition to the other item?

A This is the state that they were in.

Q Now, had you ever seen packages packaged in that manner prior to this occasion?

A Well, we see a variety of packaging and wrappings and over wrappings when we do interdictions, generally we see some type of electrical tape over wrapped. This is actually as far as I know, and as far as I had found, the first duct tape ones that we found as an over wrap. We find duct tape

underneath, but this was the actual outside layer.

Q Now, have you had any training with respect to the packaging of controlled substances like cocaine?

A Yes, I have. Over the past five -- four or five years, I've had numerous training in drug enforcement, and if I may refer to certificates of training, I can easily refresh the dates and the particular courses.

MR. ROCKTASHEL: Your Honor, I think this might be a good opportunity to break, because that may take a while.

THE COURT: That's fine. We'll recess until quarter of two.

(Whereupon, a luncheon recess was taken.)

AFTER RECESS

THE COURT: May I see counsel at sidebar? Off the record.

(Whereupon, a discussion was held off the record between the Court and counsel.)

(Whereupon, the following occurred at sidebar between the Court and counsel:)

THE COURT: I was just suggesting that to expedite matters this afternoon, it seemed that the only evidence that's relevant to the issue of suppression of the contents of the bag and which may be relevant to the propriety of actions taken after that have only to do with the total -- totality of the circumstances surrounding the officers' conduct leading up to and culminating in the opening of the Defendant's bag, whatever that might have been. His observations, his information obtained from other people, and all that you may wish to produce.

But that what happened after the entry into the bag, the identification of the contents as to what was there, whether in fact it was cocaine as asserted in the record, and whether or not the hair samples were properly

obtained, all must be based upon the propriety of the entry into the Defendant's bag.

MR. DEVECKA: I think they do have to establish, through, that the brush was -- the bush and pick were in the bag. I think that that's important to establish that the fact that the search warrant then is the fruit of the opening of the bag.

THE COURT: Well, are you contesting -- you're contesting the search warrant. I don't -- well, if you're worried about that, you might go ahead and at least have him identify what you find in the bag.

MR. ROCKTASHEL: I planned on a more streamlined expedition on the actual -- his ultimate apprehension, stop, what was in the bag. I'm not going to really go into any details. I am considering seriously not calling Officer Felicita -- Trooper Felicita because I think it would tend to be repetitious, although he did -- when he was

stopped, he did make some statements. But I think he was in custody at this particular point in time.

So we are back to the fruit of the poisonous issue. Officer Sattazahn reviewed the tickets themselves and gained the information. I may call him for that limited purpose, but that's prior to the actual opening of the bag.

THE COURT: Sure. Anything that happened prior to the opening of bag.

MR. ROCKTASHEL: We're on the downhill side of this trooper's testimony now.

THE COURT: I hope so.

MR. DEVECKA: Off the record.

THE COURT: All right.

(Whereupon, a discussion was held off the record.)

BY MR. ROCKTASHEL:

Q Sir, I think you were telling us before we broke that you had received some

training in the area of -- in the investigation of drug trafficking. Would you describe your training in that area for the Court, please?

A That's correct, I was. I think the easiest way to do it, if I could refer to certificates of training, that would help me recollect the dates and the specific course, if that's fine.

Q What kind of courses or training have you taken?

A They're basically narcotic investigations -- or excuse me, drug investigation courses, interdiction courses, training courses, in the areas of related narcotic enforcement.

Q And what agencies have sponsored these kind of training programs?

A Pennsylvania State Police have, the Attorney General's Office has, the DEA has.

There's been some college seminars. It's mostly federal and state certificates.

Q So it would be Pennsylvania Attorney General's Office, the Pennsylvania State Police and the federal drug enforcement agencies; is that a fair summary of the agencies that have sponsored the courses you've taken.

A Also the Federal Highway Administration, as well.

Q With respect to these courses offered by those agencies, could you estimate approximately how many hours in terms of course time you've taken overall?

A I would say at minimum, a month. At least four weeks.

Q Four weeks of training?

A Minimum.

Q Now, in connection with those courses, have you received any kind of training with respect to how drugs packaged in bulk form or

actually packaged and the kinds of material that are used to package those things?

A Yes, I have.

Q And specifically what courses have you taken with respect to that kind of packaging?

A Okay. One course that covered that was a conference I went to down in Counsel of Governments at Virginia Beach. That was a three day course that covered narcotic investigations and packaging, transportation techniques part of that course.

Q Now, did that training include the use of tape, like electrical tape you've described during previous recovery of drugs and the duct tape which you found wrapping the packages that were found from Government Exhibit 2.0?

A I don't know about electrical tape, but I do recall them using duct tape during the seminar because at that time, this was back in 1988, that was the tape that was being used.

Q What is the purpose of using duct tape, based on the courses you've taken or the training you've taken or any kind of tapes, such as the electrical tape you've seen on past occasions?

A The tape is over wrapped around the substance to keep the substance from leaking. It prevents leakage, keeps it in a nice, compact state. It if gets bounced around, it's not going to get popped open. It really secures the package. Also there's some type of what people believe is masking effect. If they over tape it enough times, it's an attempt to deceive the narcotic canine dog.

Q Now, I've shown these exhibits previously, they're Exhibits 5.0 and 5.1. These are the three bricks of cocaine wrapped in duct tape, is that correct?

A That's correct.

Q Now, would you open the bag, Exhibit 2.0, please? What's inside the bag? Could you just identify the objects?

A Okay.

Q By Exhibit Number, if they have one?

A The Government Exhibit 1.1, which is the third of three, is the contents of one of the brickettes I removed from the bag at the time of its seizure.

Q And I take it it's been emptied into the clear plastic bag in the course of the laboratory analysis, is that correct?

A I believe that's correct.

Q Is there any more like that contained in the black bag?

A Yes, there is. There's two additional. There's Exhibit 1.0, which is the first of -- looks like two marked on this one, but this was also in there. And as well, there's a third which is marked 1.0, two of two.

Q How would you characterize the weight of the duct tape wrapped bricks containing the cocaine you have just identified for the record?

A A kilo. It's what I recognized as a kilo.

Q At the time you picked them out of the bag or you felt them, how did they feel to you in terms of their weight or consistency?

A The consistency of those bricks was compact. It was actually in a compressed form. The lab had to bust up the substance to get to the taping.

Q Now, based on your experience and training, when you opened the bag and found those bricks in there, what did you believe them to be?

A At that time I suspected they were cocaine.

Q And why is that? What aspects of them caused you to believe this?

A Based on the shape and configuration of the bricks, and the over taping, basically more so on the shape of the bricks.

Q Now, had you gotten a search warrant before you opened the bag, Government Exhibit 2.0?

A No, sir.

Q And why not?

A The bag -- I believed to be abandoned and didn't require, under state law, a search warrant.

Q And why do you say was abandoned? What facts and circumstances were apparent to you that caused you to believe that it was, in fact, abandoned property?

MR. DEVECKA: Objection. Misstated the witness's testimony. He said he believed it abandoned, but was asked why was it abandoned or what factors led him to --

THE COURT: Sustain the objection.

MR. ROCKTASHEL: I'il rephrase the question.

THE COURT: What is the basis fcr his opinion.

BY MR. ROCKTASHEL:

Q What's the basis of your belief at the time that you took the bag that it was, in fact, abandoned property?

A That there were several facts and circumstances to my knowledge at the time that led me to believe that the bag in question here was abandoned. The bag itself doesn't have any type of ownership tag or identifiable items attached to it. That is --

Q Why is that significant?

A Well, I know when I travel, I have a name tag on my bag in case I get separated from it.

Q What other facts or circumstances support your view that the bag was, in fact, abandoned?

A The tag is just one indicator. From there we could not find an owner. There was no one sitting next to it claiming ownership. There was no one sitting around it claiming ownership. And as a matter of fact, the entire bus, no one claimed ownership. Couple that with the fact that we had a witness, the driver himself telling us that the owner of this bag wasn't on the bus, you know. He's not there. We tried to locate the owner. We, as a matter of fact, sent marked patrol units scouring the area trying to find the owner, with negative results. With all this knowledge, I terms the bag abandoned.

Q Now, the person that was described by the bus driver you had stated previously matched the description of the person you saw exiting the bus, specifically the Defendant; is that correct?

A True.

Q And what, if anything, about the demeanor or activities of the Defendant caused you to believe the bag was abandoned?

A Well, he left that particular stop unscheduled. There was no ticket terminating at State College or at Milesburg. All the tickets on the bus were to locations west of Pennsylvania. As a matter of fact, I don't think anyone was terminating in Pennsylvania.

Q Had you determined prior to opening the bag exactly where that particular person's destination was, specifically the Defendant's destination based on the ticket?

A I believe we had, just by the ticket that the driver purported to be the ticket of Mr. Perkins.

Q And was that destination Milesburg?

A No, it was not. It was, in fact, Cleveland.

Q You had indicated that the Defendant was pacing in front of the location of the--

MR. DEVECKA: I'm going to object to the leading nature of these questions. He's redirect --

THE COURT: Sustained.

BY MR. ROCKTASHEL:

Q Did you ever locate -- strike that. At the point in time where you -- when you were attempting to ascertain the ownership of the bag, had you undertaken any additional efforts to locate the Defendant?

A Yes, we had. We had searched the inside of the facility. Then we had commenced an outside search of the facility to include the calling of regular patrol troopers from the interstate and the county patrol surrounding areas to try to ascertain the whereabouts of the Defendant.

Q Now, did that take place prior to or after the -- you looked inside the bag?

A That was definitely after we had found the drugs in the bag.

Q Now, prior to the time that you actually opened the bag itself, had you undertaken, either yourself or through other officers, any search of the premises of the truck stop facility?

A Oh, absolutely. Myself, Trooper Sattazahn. I know myself, I checked the restaurant, I checked restrooms, I checked the store area. I checked the entire internal building with a negative result.

Q You didn't find the Defendant anywhere?

A No, I did not.

Q And that search took place prior to the time the bus was called for boarding?

A That's correct. We searched before the final boarding and we searched after, you know, we found the bag.

Q Did the interdiction activities, the investigative activities that were undertaken,

including the recovery of the drugs in the bag, delay the departure of the bus at all?

A There was a delay. Basically when we find drugs in a bag, the bus drivers are very curious and they like to hang around and see what's in the bag, which --

Q Was that true in the particular instance?

A Yes. The driver did, in fact, view the contents of this bag.

Q And could you estimate how long this delay was?

A I would say less than ten minutes.

Q Ten minutes beyond the usual time that this bus would depart after the termination of the rest period, is that correct.

A Approximately.

Q Now, have there been other occasions where you've received property that you've determined to be abandoned prior to this particular occasion?

A Yes.

MR. DEVECKA: Objection to the use of the term determined to be abandoned in the question is not proper.

MR. ROCKTASHEL: Your Honor, I said that you determined to be abandoned. It's really his determination.

THE COURT: I understand, Mr. Devecka, whenever he says that, that's his opinion.

MR. DEVECKA: With that in mind, I withdraw the objection, Your Honor.

THE COURT: Go ahead.

BY MR. ROCKTASHEL:

Q Have there been other occasions in your interdiction activity at Milesburg where you've determined certain property to be abandoned?

A Yes, there is.

Q And on approximately how many other occasions?

A I'm just guessing. I would say maybe around 30.

Q And in the course of locating property determined to be abandoned, was there any drugs recovered from the property?

A In each time that we have located a bag that I felt was abandoned, we have either found drugs, narcotics, or guns. Or money.

Q In which direction were those bags traveling on the bus that were later determined to be abandoned and contained the contraband that you've described?

A Heroin and cocaine travel westbound. Marihuana and -- marihuana travels eastbound. Guns have been going both directions.

Q Now, was the Defendant ever located?

A Yes, he was.

Q And where was that?

A He was located in near proximity to the actual truck stop. It was an adjoining -- I'm sorry. Not adjoining, but it was the

nearby truck stop, maybe one tenth of a mile, maximum, away.

Q What kind of terrain, if any, separates the location of the Best Way Truck Stop and where the Defendant was ultimately found?

A There's a little hill, woods and marsh area there.

Q Did you ever see the Defendant at the location where he was eventually found?

A Yes, I did.

Q And do you know what time he was found, approximately, with respect to the time that we've been talking about, the 9:45 period when the bus pulled in?

A Yeah. I could refer to my report, but I believe it was just prior to midnight.

Q So approximately two hours after you had noticed the Defendant not in the truck plaza area, is that correct?

A That's correct. Two hours is a good estimate.

Q And would you describe very briefly for the Court how the Defendant appeared at the time you saw him there?

A At the time I had the opportunity to go down and view Perkins, he was wearing a black nylon jump, running suit thing. He had had a -- this was a two piece outfit. It was pants and a jacket. The jacket was, in fact, reversed when he was stopped at the nearby truck stop. When he had originally come off the bus, there's a gray panel on the front, a grayish white panel on the front of his jacket. At the time of his being stopped at the next truck stop two hours later, it was, in fact, reversed.

His clothing had -- around the pants, had little splotches of mud and water on them. That appeared very recent, and very fresh.

Q Now, you indicated when you went in to the bag, in addition to the three bricks of cocaine that you found there, you found, I think, it was a ball cap; is that correct?

A That's correct.

Q A T-shirt?

A That's correct.

Q Any other objects other than the ones I've attempted to summarize?

A There was a hair pick and a hairbrush, and there was also a set of keys.

Q Now, are the hair -- is the hair pick present in this courtroom?

A The hair pick is, yes.

Q How about the hairbrush itself?

A The hairbrush is currently logged into the laboratory in Harrisburg.

Q And what was the purpose of doing that?

A The hairbrush contained hair which at the time that I observed it, I believed

belonged to the hairs of the Defendant Perkins. So I submitted that to the lab, along with some sample hairs that I withdrew from Mr. Perkins' head with a search warrant.

Q And did you, in fact, obtain a search warrant?

A Yes, I did.

Q And just for the record, I'm going to show you Government's Exhibit 6.0. Do you recognize that document?

A Yes, I do.

Q And what is it?

A This is the search warrant number H21675, which is a search warrant that I applied for to get 25 -- or approximately 25 hair samples from a representative area of the head of Ted Russell Perkins.

Q And did you, in fact, obtain those hair samples?

A Yes, I did.

Q And are they inventoried anywhere in the exhibit I've just shown you?

A The last page of the exhibit you've handed me contains a receipt inventory form that we use in conjunction with the search warrant and on it, on line one, is a listing for 25 hair samplings.

Q And what was done with the hair samples you recovered?

A I submitted those samples, along with the hairbrush, to our lab division in Harrisburg to do a comparison from the hairs matched -- I'm sorry -- for a comparison of the hairs found in the hairbrush to the hairs that I pulled from Mr. Perkins.

Q I'm going to show you Government Exhibit 4.0. Would you tell us what that is, please?

A This is a photostatic copy of the Greyhound lines bus ticket which is the ticket that I was discussing from Newark to

Cleveland. It was purchased, or purported to be purchased by the Defendant Perkins by the bus driver.

Q How was the copy of that ticket obtained?

A We photocopied the copy that the bus driver had during the interdiction. I believe it was photocopied by Trooper Sattazahn.

Q Does that ticket indicate the time of departure anywhere?

A Yes, it does. In the upper right-hand corner there's an indicator field DEP, which I assume to mean departure, and it has 015 -- I'm sorry, 01, September, '94 at 0600 P, which is 6:00 p.m.

Q And is there an indication as to when the ticket was actually purchased.

A That's on the left-hand column of the ticket. Right underneath confirmation number there's a date, 1, September, '94, and the

time of 0604 P, which I interpreted to be 6:04 p.m.

Q Now, you indicated that you had at least three troopers there, including yourself, Sattazahn and Felicita; is that correct?

A That's correct.

Q Did you have any motor vehicles, state police motor vehicles present?

A We all had our government or state issued vehicles with us.

Q Were they marked or unmarked units?

A Everyone on my team has unmarked, unconventional police unit. The only marked vehicle there was a state police canine unit which belongs to Trooper Felicita and his canine.

Q I asked you about information provided to you by the passengers and the bus driver concerning the person who was sitting in the

seat where the bag was located. Do you recall that testimony?

A Yes.

Q How did the descriptions of the passengers compare with the description of the person you saw and identified as the Defendant and the description provided by the bus driver?

A They matched. They all matched. As a matter of fact, they all matched very well. Everyone, even though it wasn't a detailed description, they all said tall, thin black male with a black running suit on. I checked the bus and there was no one else matching that description.

Q Now, when the Defendant was later found at the nearby facility two hours after the bus pulled into Milesburg, do you know whether or not the Defendant was ever arrested during that time period?

A He was stopped by Trooper Felicita. He was -- I came down at that point and we did place him under arrest.

Q Now, prior to that time had you provided any descriptive information concerning the Defendant to either Trooper Felicita or any other troopers in the area?

A We had hand held radios and we were in contact with the Milesburg interstate patrols and the Rockview uniformed patrols there, and we had broadcast the description to those units and Trooper Felicita was aware of the description.

Q And how did you know to go over to the location where Felicita located the Defendant?

A We had actually started to break up for the evening. We figured that we had lost him and we weren't going to find him. We terminated the interdiction detail. Trooper Felicita was on his way home. Checked the truck stop and apparently found Perkins. He

then radioed to Trooper Sattazahn, who had his radio still on. And he received the transmission from Felicita indicating that he had found the suspect.

Q And was he arrested at any particular time?

A Yes, he was.

Q And on what basis was he arrested?

A He was basically arrested by myself and Sattazahn in the presence of Felicita for the narcotics.

Q The narcotics you had recovered from the bag?

A That's correct. And that was based on, you know, all the circumstances and facts.

Q What items, if any, were recovered from the Defendant's person when he was arrested?

A Perkins had some cash, somewhere in the vicinity of, I believe, a hundred dollars. There were some condoms in his pocket. There

was in his possession an electronic paging device, known as a pager. And a piece of paper with a New York City, New York number scribbled on it.

Q How did you determine that it was a New York City number?

A We checked the area code.

MR. ROCKTASHEL: Your Honor, may I have a brief moment to check my notes?

THE COURT: Sure.

BY MR. ROCKTASHEL:

Q Are you familiar with the bus schedules for the westbound buses that would stop at this particular location in Milesburg?

A We familiarize ourself with them, but they change periodically.

Q And do you know whether or not there were any scheduled transfers or any other kind of buses scheduled for pick up at this particular location?

A No, there was not. Not to my knowledge.

Q For tickets sold at this particular location, to your knowledge?

A I believe they can be.

Q And how was that accomplished?

A They would have to go to the fuel desk, I believe, and order one there. That's just based on me seeing a sign there for Greyhound, and it says inquire at desk. I don't know if, in fact, you can or can't.

MR. ROCKTASHEL: Thank you, sir. I don't have any other questions at this time.

THE COURT: Cross-examine.

MR. DEVECKA. Thank you.

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States
October Term, 1996

TED R. PERKINS, II,
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Third Circuit

APPENDIX TO PETITION
FOR WRIT OF CERTIORARI
Volume II of II

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Petitioner, Ted R. Perkins, II

140 pp

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CROSS-EXAMINATION

BY MR. DEVECKA:

Q Trooper, you said that the Defendant was apprehended at a nearby facility. What was between the restaurant and that nearby facility?

A A Days Inn Hotel.

Q A Days Inn Hotel?

A Um-hum.

Q Do any of these pencils work for -- pens work for that?

You're saying that if you look down towards the Best Way Motel at that truck stop, that the garage -- truck garage is on the other side of that?

A Of which truck stop?

Q The truck stop where you did this bus interdiction.

A That is the Best Way, sir.

Q Is the restaurant that they stop in front of the Buckhorn Restaurant?

A. No, sir. They stop at Best Way. The restaurant is in the rear of the Best Way Truck Strop.

Q So they stop in the truck stop where the trucks are located?

A At Best Way, yes.

Q I'm not sure that I understand from what you are saying where the various locations are and where the bus was. Could you draw it for me, please?

A Now, this obviously, is not going to be to scale and I'm not that good of an artist, but I'll do the best I can for you. You have to excuse my spelling as well.

This here would be the best drawing that I could do of the Best Way Truck Stop at this point. In the rear of the Best Way Truck Stop there's a restaurant. The bus would stop

at this location here in front of this little overhang.

THE COURT: That doesn't go any good if I can't see it, so if you'd hold it up while you're pointing to it.

THE WITNESS: I'm sorry, Your Honor.

THE COURT: And you can come here, to, Mr. Rocktashel.

MR. ROCKTASHEL: May we give this an exhibit number?

THE COURT: Yes, I think we ought to do that. Do you agree, Mr. Devecka? This is Defendant's Number 1.

(Whereupon, a document was produced and marked as Defendant's Exhibit No. 1 for identification.)

THE COURT: Now, if you just hold it so you can be close enough to point to it so Mr. Rocktashel can see it. Go ahead and ask him what you'd like to ask him.

MR. DEVECKA: Where is Mr. --

THE COURT: We're all right here.

THE WITNESS: This is State Route 0150, which is the route in front of Best Way. This area here would be Interstate 80. Best Way Truck Stop is a large building. In this back portion is a restaurant. The bus would come in off 150, pull in and stop in front of this semicircular overhang. These are concrete barriers, I guess to keep the trucks from driving into the place or whatever (indicating).

The bus would stop right here at this location, and this is where the people would debark. And from here they go to the restaurant, the store, the game room. These are the fuel pumps. Next to that is a hotel. I believe it's a Days Inn. Over here there's like a wooded area. And down in this area is a parking lot. And that's basically the --

BY MR. DEVECKA:

Q You have this labeled Buckhorn?

A Yes, sir. The Buckhorn is the next property up from the hotel. And that's also like a truck stop and it has, I believe, a restaurant.

Q When you say the hotel is here, you have it on, as you look at the drawing, the right side. Isn't in a fact the hotel is down here to the left side of that drawing?

A No, sir. That would be a cornfield. And this is like a garage area here. This is more woods and an open, like, large yard here. And across the road here are corn fields and woods.

Q Is there a railroad track that runs back across here?

A I believe there is.

Q And a bank that goes down?

A I believe there is.

Q And then there's an 88 Lumber behind that?

A I've never seen the 88 Lumber. But if that's going toward the interstate, then that's correct.

Q And over here you say are corn fields?

A That's correct. There was a cornfield there this summer and there was cornfield over here this summer (indicating). Now, that's as you face the truck stop, counselor.

Q Okay. Just a second. I am going to ask you about this picture I'm showing you. Perhaps we should mark it so I can ask you questions about Defense Exhibit 2.

(Whereupon, a photograph was produced and marked as Defendant's Exhibit No. 2 for identification.)

MR. ROCKTASHEL: Your Honor, may I see the photo?

MR. DEVECKA: Sure.

BY MR. DEVECKA:

Q Now, does this photo appear to be a view from here down across the truck stop that you mentioned? And you see Best Way sign on the other side?

A This photograph here appears to be taken from the Buckhorn travel plaza.

Q This way (indicating)?

A That's correct.

Q And it shows the Best Way sign over on the left-hand side of that picture, is that correct? Hotel sign?

A Yeah. I don't know that's the Best Way sign, but that's definitely the hotel sign. That would probably go right here, this sign. To orient the picture to my drawing, would probably be over here somewhere (indicating).

Q And that is the Defendant's Exhibit 2, and that shows the motel sign on this side; is that correct?

A I believe it does. Yes, it does.

Q Do you believe it might be correct?

A I believe it is.

Q But does show the front here of the truck stop?

A No, it doesn't. Actually it only shows the sign.

Q Right. But it shows the -- it's taken across the front of the truck stop, is that correct?

A It looks like the angle of the photograph is in that direction.

Q Thank you. So does it look as though the pavement continues all the way down from that truck stop to the motel?

MR. ROCKTASHEL: Your Honor, I object to the lack of specificity. Are we talking about the view of the picture or the actual terrain that the picture is intended to represent? I think that ought to be clarified.

THE COURT: I interpreted the question as to what exists on the property, regardless of what the photograph shows.

MR. DEVECKA: Did you look --

THE COURT: By paving, what --

BY MR. DEVECKA:

Q It continue -- paved as a parking lot or is it paved area?

A In this photograph, asphalt is separated by intervening barriers, which is like a guide rail and a concrete curb. From there it looks like more asphalt. From there it looks like the pavement -- from here it looks like it keeps on going. But I know that there is, in fact, a grass strip that separates the Days Inn from Best Way. So I guess the answer --

Q But that would be on left side of your picture?

A The entrance way is actually coming in here this way (indicating). And this -- I

believe this area here is an intervening grass strip.

Q You're indicating intervening grass strip between the truck stop and the Buckhorn Restaurant?

A I'm not familiar with what's intervening between the hotel and the Buckhorn.

Q You're saying the Buckhorn is down here by the hotel?

A This photograph was taken from the Buckhorn.

Q So where's the hotel?

A The hotel? In here in your photograph would be out of your view finder here to the right.

Q But that is the sign for the motel, is that correct?

A I believe it is.

Q And that appears to be at the left-hand side of your picture, as the picture is

taken, as you said of the parking lot of the Buckhorn Restaurant?

A That's what it appears to be, yes.

Q But that's not exactly what's true?

A I'm not certain. I don't know exactly what signs look like, you know, from this angle.

Q But you're saying the hotel is to the right of the Best Way restaurant?

A Oh, absolutely.

Q Okay. Thank you.

A One hundred percent.

Q Do you know what the back of the truck -- of the truck stop looks like?

A Looking at what?

Q The area in the back of the truck stop.

A There's a grass section back there. There's woods. There's a parking lot behind the restaurant. And I believe there's railroad tracks, like you indicated.

Q But immediately behind the restaurant is paved, is that correct?

A In the parking lot that I know of, yes.

Q Okay. So if you were to go behind the restaurant as you drew it in front of the truck stop, and that is back here where my thumb is (indicating)?

A. That would be correct.

Q That will be paved?

A A portion of it, yes. Not the entire --

Q No, I know there's grass behind there.

A Correct.

Q But there's a parking lot behind there?

A Yes, there is.

Q Have you ever gone back there and looked down this way (indicating), from right to left on your drawing?

A Actually no. The furthest I've ever been back there is the grassy field area and in the parking lot itself. I've also been back -- there is a fence back here that borders a -- looks like an impound yard or something like that. I've been back in there. But I've never been back to, you know, the woods or the railroad tracks.

Q Have you walked in back of the Best Way?

A The grass fields and parking lot, yes.

Q No. I mean on the parking lot.

A Yes.

Q It as possible to walk in back there?

A Behind here?

Q Yeah.

A Oh, absolutely.

Q Thank you.

And you say when Mr. Perkins was found, he was at a truck stop beyond the motel, hotel?

A Correct.

Q What is that, a hotel or a motel?

A I don't know. I've never stayed there and I've never been over there.

Q Okay. And what would be the Buckhorn Restaurant?

A The hotel?

Q No. Are you saying he was found in a parking lot beyond the motel, hotel?

A Correct. He was found in the Buckhorn parking lot.

Q Okay.

A Or what I know as the Buckhorn.

Q Okay. All right. Now, you went is there to interdict this bus; is that correct?

A I went there to interdict several buses.

Q And this was among --

A Yes, sir.

Q -- this group?

A Yes, it was.

Q Did you have any information that would lead you to believe that there were drugs being transported on this particular bus --

A On this particular bus?

Q Yes.

A No.

Q So you went there in anticipation of perhaps finding some?

A Yes.

Q Now, you say you went to school for interdiction?

A I've had some interdiction training.

Q And because of that interdiction training, that's what led you to position the troopers and the dogs so that the debarking passengers would have to walk past them?

A That's what we did on this bus. Every bus is different, depending on manpower, who's

there. Different guys like to do different things.

Q But in this particular case, you specifically took the troopers and the dog and positioned them near the bus door so that the debarking passengers would have to walk by them or see them?

A Absolutely not. I didn't position anyone anywhere. I positioned myself to watch the people debarking. I'm not a supervisor. I'm not in charge of positioning people, or the position that they chose to take up are the ones that they decide among themselves.

Q Okay. So you specifically, though, positioned yourself near the door to watch debarking passengers; is that correct?

A In near proximity. You know, I wasn't blocking --

Q You weren't blocking the door?

A That's correct.

Q But you were within 10, 15 feet of the door?

A Yes, I was.

Q Now, did you testify on direct that Mr. Perkins had gotten off the bus and had gone some ten feet or so when he stopped stretching and noticed you, and you said the canine?

A I assume he noticed the canine. He noticed police -- he noticed our team in general being there. He noticed police. He -- had gone approximately 10, 15 feet.

Q And you saw him stretching and appear to be groggy?

A Absolutely.

Q Sleepy?

A He appeared sleepy.

Q This was nighttime, is that correct?

A That's correct.

Q And you testified on direct that sometimes you station police officers around a

debarking bus so you can see what passengers are doing on the bus?

A We don't position them around the bus. We position them between the Best Way and the bus. And we try to stay pretty collectively together for safety, for one; and we do watch, in fact, the bus people, the inside to see what they're doing there. I do.

Q What did you see in this bus in particular?

A Well, I saw people stand up. I saw people shifting bags, putting bags up top, putting them down to the bottom. I also watched people debark.

Q Did you happen to notice Mr. Perkins through the window?

A No, I didn't.

Q You say Mr. Perkins was in -- not the first passenger on the bus, but perhaps toward the middle of the group, little forward of the middle of the group?

A Correct.

Q And you had been present at the truck stop from 4:00 or 6:00, is that correct? you had been there somewhere between -- between almost six hours and four hours, almost four hours?

A I believe that's correct.

Q 9:45 p.m.?

A At this point I'm not certain what buses were running in there at what time. But we were probably there probably six, eight, ten. Somewhere -- we were definitely there four hours, anyway.

Q Now, are you saying that every westbound Greyhound bus from New York to, say, Cleveland has narcotics or drugs on it of some kind?

A Well, I could say that every second or third bus that we have interdicted does.

Q That's your experience?

A Yes, sir.

Q Now, you saw Mr. Perkins get off the bus; is that correct?

A Yes, I did.

Q And you didn't say anything to him, is that correct?

A Didn't say a thing.

Q Now, you say you took the canine on the bus?

A I didn't take the canine on the bus. Another trooper did.

Q Did you see the canine on the bus?

A Yes, sir, I did.

Q And the aisle of the bus is how wide?

A This would have to be a guess. I would say foot and a half, maybe two feet.

Q And was the canine conducted down the aisle of the bus?

A I believe it was, yes.

Q Did you see the dog further down from the door when you were on the bus?

A I know that the bus -- the dog was on the bus. I don't recall if it was taken the full length or not. I know the dog was on the bus.

Q Okay. Now, where were the troopers -- where were you, to be specific, between the time the dog was escorted onto the bus and the bus departed?

A I was on the bus, off the bus, inside the Best Way, inside the Restaurant, inside the upstairs bathrooms and showers. I was in the game room. I was probably in the basement. I was in some hallways. I was basically all over the Best Way during that whole time.

Q Okay. Now, at what time were you given information about this ticket? Let's say the time the dog that goes on the bus is the marking time?

A Okay.

Q And I assume that was within three, four minutes of the passengers getting off; stopping, getting off?

A It wouldn't be quite that soon. It would probably be maybe between five and ten minutes, at the earliest.

Q And where was Mr. Perkins at the time that the canine was taken on the bus?

A Mr. Perkins was outside the Best Way walking, pacing the sidewalk here.

Q Back and forth?

A That's correct. Yeah. He was anywhere from the semicircle overhang area all the way out to here (indicating). Excuse me. Your Honor, I'm sorry. He was anywhere from the front semicircle portion here to this entire sidewalk are here in front of the Best Way (indicating).

Q Thank you?

THE COURT: By the way, did the bus stay in the same position the whole time?

THE WITNESS: Yes, sir. It never moved.

BY MR. DEVECKA:

Q So the dog probably went on about ten minutes after the passengers debarked?

A Approximately. It might have been a little sooner than ten.

Q Do you know -- do you recall seeing anybody talking to the driver about tickets?

A I believe Trooper Sattazahn talked to the driver about tickets or received the tickets from him.

Q Okay. And then you two examined the tickets together?

A Not really. Tickets aren't my thing. Tickets are Sattazahn's thing. He likes tickets. I like watching people.

Q The ticket that you ultimately attribute to Mr. Perkins doesn't have a name on it, is that correct?

A That's correct.

Q So the only way that you know that that was Mr. Perkins' ticket is because someone told the trooper, is that correct?

A To my knowledge, that's correct.

Q Did you fill out a police report?

A Yes, I did.

Q May I see a copy of his police report?

MR. ROCKTASHEL: A copy was furnished with the exhibits this morning, approximately nine a.m.

THE COURT: A copy of that to counsel as well?

MR. ROCKTASHEL: I didn't provide a copy for the Court. I provided a copy pursuant to Rule 26.2 to defense counsel with the packet of exhibits I laid on counsel's table.

THE COURT: That's what I was referring to.

MR. ROCKTASHEL: Your Honor, I didn't mark a separate Jenks type exhibit for the Court, unless the Court would --

THE COURT: No, I'm not looking for it. He is. I gather what you're telling me is you provided it to him.

MR. DEVECKA: Well, unbeknownst to me.

BY MR. DEVECKA:

Q Did you record the bus driver's name in your police report?

A No, I did not.

Q Did you record any passenger's name in your police report?

A No, I did not.

Q Do you know or were you ever told that any other police, state police officer recorded the name of the bus driver in his report?

A I don't believe they did.

Q Okay. Now, you went on the bus. To your knowledge, did somebody remain on the bus

or near the bus the whole time the interdiction was taking place?

A I believe there were people milling around the entrance way watching us, including Mr. Perkins. And there was also a woman that was on the bus as well during the whole process.

Q Did you take her name?

A No, sir.

Q During the interdiction, when you left to bus to go to Best Way, did anybody stay with the bus, any state trooper?

A I don't know.

Q You don't know?

A There was always someone outside. Do you mean on the bus, outside the bus?

Q As far as standing outside the bus.

A Oh absolutely. There's always someone around the bus.

Q State trooper, you mean?

A Absolutely.

Q Okay.

A Now, whether or not they were actually on the bus, inside on the bus --

Q Or standing outside.

A But they were definitely outside.

Q In front of the bus doorway, within 10 or 15 feet?

A There is always someone viewing the bus.

Q Okay. And after the canine was taken on the bus, did you lose sight of Mr. Perkins?

A Somewhere along the interdiction process, just Mr. Perkins standing out there acting different, doesn't mean I have to focus a hundred percent of my attention on him, and I went on with the details and did, in fact, lose contact with him.

Q Okay. And at that time did you conduct what in your affidavit you called a cursory search?

A That's correct.

Q That's what you are talking about when you went in and you went looking in the showers and the game room?

A That's correct.

Q And the store. And how many troopers were doing this search?

A At least two. I know I was. And I believe a couple of the other guys were keeping an open eye. I know I was actively searching. I don't know --

Q But you called that a cursory search, is that correct?

A If that's what I called it in my report, I guess it would be a cursory search.

Q What would you call it in your affidavit?

A A search, cursory search. I don't know.

Q You don't know if you called it a cursory search in your affidavit?

A I would have to refer to my affidavit.

MR. ROCKTASHEL: Your Honor, whether he called it cursory, active, I don't think that really matters all that much. He's described what he's done. And whether or not that's cursory or some other kind of search, it really doesn't matter. I think the main --

THE COURT: I agree. It's what he did and whatever he can elicit as to what he did, did or didn't do.

BY MR. DEVECKA:

Q You concentrated your search inside the restaurant, is that correct?

A No, that's incorrect.

Q Where did you look?

A Besides looking inside the restaurant, I looked in the game room. I looked in the store area, and I checked upstairs in the shower area and couple of the hallways.

Q Inside the building?

A Inside the Best Way Truck Stop, yes.

Q Isn't it true that you never saw Mr. Perkins go into that building?

A That's true.

THE COURT: Let me make it clear. Are you talking now about a search that you made entirely prior to the removal of the bag from the bus and the opening of the bag?

THE WITNESS: That's correct.

THE COURT: All right.

BY MR. DEVECKA:

Q And at that time -- at the time that you were doing this search of the interior of the building, did you then continue to search into the -- behind the building to see if anybody was in that parking lot area that extends behind the building?

A No, I don't believe I did.

Q Now, after you did that search that you may have called cursory search in your exhibit, I believe if I showed you -- District

Attorney, is there an exhibit number on the arrest warrant?

MR. ROCKTASHEL: Counsel, that's my working copy of the arrest warrant, which you're welcome to use, if you like. I think the trooper has a copy of his own arrest warrant in his paperwork.

BY MR. DEVECKA:

Q Do you have a copy of your arrest warrant there?

A Yes, sir, I do.

Q Can you look at your copy of your arrest warrant and tell me whether you called this a cursory search or not?

MR. ROCKTASHEL: Your Honor, I object. I don't think the search or the term cursory is really going to lead us anywhere.

THE COURT: Well, I'll let him find it.

BY MR. DEVECKA:

Q Is that the report? Is that your affidavit?

A I believe that is the affidavit.

Q It's in here someplace, I believe.

A You said the arrest warrant. This an affidavit for a search warrant.

Q Okay. Fine. Did you use the term cursory search in the search warrant affidavit, too?

A I could look and advise you if I did or did not. Do you want to direct me to a certain line, counselor?

Q I will.

A Okay.

Q This is the arrest warrant affidavit.

A Okay.

Q Do you have it?

A Is that a page two on top of that? Yeah.

Q You use the term cursory search?

A Yes, I did.

THE COURT: Mr. Devecka, I don't want to interrupt you. I understand the Defendant needs a break at this point, and we'll do that. And Mr. Rocktashel, if you can make a phone call.

MR. ROCKTASHEL: Certainly, Your Honor.

THE COURT: Take a recess. We will try to keep it to ten minutes.

MR. DEVECKA: Your Honor, if we could approach the bench briefly while we're here. We may resolve the need for some of these witnesses here today. I believe that's what he's going to make a phone call about.

THE COURT: Take a break and we'll do a sidebar off the record here at the moment.

(Whereupon, a discussion was held off the record between the Court and counsel.)

(Whereupon, a short recess was taken.)

AFTER RECESS

MR. ROCKTASHEL: Your Honor, I can report back to you. Would you like to do it at sidebar?

THE COURT: I think we might as well continue to do that.

(Whereupon, a discussion was held off the record between the Court and counsel.)

THE COURT: You may proceed, sir.

MR. DEVECKA: Thank you, Your Honor.

BY MR. DEVECKA:

Q Now, it was after this cursory search of the facility that you then went back to the bus, the bus was preparing for reboarding; is that correct?

A I believe that's the process, yes.

Q Is that what you have in your affidavit in front of you?

A On which affidavit?

Q Well, let's look at the affidavit of probable cause. You remember the line where

it said it was a cursory search, at which time a cursory search began.

A Okay. That's the arrest warrant affidavit.

Q Yes. You are affiant and other troopers checked the truck stop but could not locate him?

THE COURT: Just a minute.

MR. ROCKTASHEL: Let me interpose an objection at this point. If I'm not mistaken, I think that the colloquy between counsel and the witness was something to the effect that that is the usual practice, and then counsel inquired, well, is that what it says in your affidavit. I mean if the affidavit is inconsistent with his testimony about the usual course of events, I don't have a problem. But if we could just pinpoint what it is that's being referenced.

MR. DEVECKA: I am.

MR. ROCKTASHEL: In reality and what counsel's attempting to impeach using the affidavits, might be easier than going back and forth trying to find things in the paperwork.

THE COURT: Do you have a specific line?

MR. DEVECKA: Yes.

THE COURT: The affidavit for the arrest warrant?

MR. DEVECKA: I'm not trying to impeach. I am trying to clarify his earlier testimony. He testified about the events that took place. I'm trying to put them in order that they actually took place.

THE COURT: All right.

MR. ROCKTASHEL: My point is, Your Honor, I don't think we need to refer to the affidavits to do that. We can simply ask the witness when things happened. If they don't

jive with the reports, then, you know, we will face that in terms of an impeachment issue.

THE COURT: Well, I agree, Mr. Devecka. If you could just ask him what happened when.

BY MR. DEVECKA:

Q After this search took place, you went back to the bus because it was reboarding; is that correct?

A That's correct.

Q And you knew Mr. Perkins wasn't on the bus because you looked and didn't see him?

A That's correct.

Q Okay. How many minutes after this search were you on the bus, noticing Mr. Perkins wasn't there, reboarding time?

A How many minutes from --

Q From the time your cursory search was concluded until the time you reboarded the bus?

A The time I reboarded the bus?

Q Um-hum.

A Probably a minute, because I finished my search and then went back on the bus or was in the area of the bus.

Q And when you were outside, you could not hear the announcement the bus was going to depart from the restaurant, could you?

A That's correct. I don't know if there was an announcement or not.

Q When you reboarded the bus, you talked to the passengers then; is that correct?

A That's correct.

Q And it's that time that you were directed to the black bag. You hadn't seen it before?

A The black bag was actually toward the end of the interviews we had --

Q In answer to my question, you hadn't seen the black bag before the interview; is that correct?

A That's correct.

Q Okay. Now, when you saw the black bag, you held it up and asked if it was anybody's on the bus; is that correct?

A That's correct.

Q Has it every happened in -- strike that. When you took the -- did you specifically take possession of the bag?

A Yes, I did.

Q Physical possession?

A Yes, I did. I walked it off the bus.

Q How did you hold the bag when you walked it off the bus?

A Probably by the two top carrying straps.

Q Just carried it off the bus in your ride hand. I'm left handed, but would you do it in your right hand?

A I assume I did. I'm not exactly certain.

Q You walked off the bus, down the steps. Which way did you turn then?

A You have to make a right to debark the bus.

Q I mean after you get off the bus.

A Okay.

Q Put the bag in your right hand, which way did you turn?

A Probably right. Generally we stop right outside the exit next to the bus and open it there.

Q Okay. So you opened it in the parking lot in front of the -- in front of the bus door?

A Not exactly in front of the bus door. We didn't block the doorway.

Q Yeah. When I say that, I don't mean that you were standing so close to the door that you were blocking it.

A Right.

Q But within ten feet or so of the bus door?

A Right. In view of the bus.

Q You opened the bag?

A Um-hum.

Q And that's when you saw the packages in the bag?

A That's correct.

Q And then the bus -- you went back on the bus to ask questions about the bag?

A I believe we did, yes.

Q Did you?

A I believe so.

Q And you asked questions for another ten minutes or so?

A Probably not even that. Ten minutes is a long time. Probably less than five.

Q Okay. But in that time you didn't write down any name of any passenger you talked to, is that correct?

A That's correct.

Q And you didn't write down the name of the bus driver?

A That's correct.

Q You didn't write down any type of verbatim statements they gave you?

A No, sir.

Q You just wrote conclusory statements like they identified a tall, thin black man in a running suit or their description agreed with the bus driver's or terms like that?

MR. ROCKTASHEL: Your Honor, he did take a supplemental report outlining what the bus driver stated, if that's what counsel is getting at. But there was no verbatim statement taken from the individuals in the sense of a signed statement taken from the bus driver or any other passenger.

THE COURT: Or any other passenger. Thank you.

MR. DEVECKA: If that's a stipulation, I'll accept it.

MR. ROCKTASHEL: I'm not proposing a stipulation. I'm just stating to the Court that just to clarify this issue so we don't waste any time on it. There was a supplemental report prepared with respect to the bus driver, but there wasn't an actual verbatim statement, as counsel has alluded to in the sense of a signed statement.

THE COURT: I understand.

BY MR. DEVECKA:

Q Did you take notes when you talked to these people?

A No.

Q These people, I mean the bus driver and passengers?

A I took no notes.

Q Thank you.

And prior to walking off the bus with the bag in your right hand --

A I don't know if it was my right hand.

Q I'm sorry. With your bag in your hand, you made no attempt to hide the bag when you walked off the bus; is that correct?

A That's correct.

Q And you walked only within ten feet of the bus before you opened the bag, is that correct?

A I'm pretty sure that's correct.

Q Okay.

A I don't exactly remember the positioning where we opened the bag.

Q One last question. Looking at Defendant's Exhibit 1, the drawing that you made?

A Yes, sir.

Q I'm putting my finger down in the left-hand side of this page.

A Um-hum.

Q Are there corn fields over there, is that what your testimony was?

A That's correct. At the border of this property here there's a field, and I believe you could see the stumps and cornstalks still there if you drive by it today.

Q But this being in September, the cornstalks weren't actually there; is that correct?

A I'm going to say I assume they were there. I don't know if they were there on September 1st or not. I didn't pay attention to that.

MR. DEVECKA: No further questions.

THE COURT: Any redirect, Mr. Rocktashel?

MR. ROCKTASHEL: Yes, Your Honor, very briefly.

REDIRECT EXAMINATION

BY MR. ROCKTASHEL:

Q I'm going to hand you a red pen and refer you to Defense Exhibit 1, the diagram

you drew, and Defense 2, the photograph. Could you make an X or some kind of mark to kind of orient what you believe the perspective would be of this particular -- of where this picture was taken? I think you indicated it may have been taken from the location of the Buckhorn Restaurant, but I just wanted to clarify that.

A Yeah. I believe the road depicted in the photograph is this State Route 150. And based on this Day's Inn sign, I would place the photograph as being taken probably in this vicinity here from the Buckhorn parking lot (indicating).

Q Can you estimate for the Court the approximate distance between the hotel and the Buckhorn Restaurant?

A Just a stab, I would say 500, 600 feet.

Q How far is the hotel from the location where the bus was stopped?

A I would say probably an additional 400, 500 feet.

Q Correct me if I'm wrong. Didn't you testify earlier that the Best Way restaurant was approximately two tenths of a mile from where the Defendant was located later that evening?

A I believe one tenth.

Q One tenth. I'm sorry. You're right. I think you did say one tenth. On this diagram, Defense 1, can you please just draw some kind of box to represent where the bus would be with the red pen I provided to you and just write bus in it so we know where the bus was located?

A (Witness complied.)

Q Could you initial approximately where you were positioned with respect to the bus, using the red pen, just with your initials, EB?

A Okay. It's really out of scale, but I'll do the best I can. According to this, it's going to look like I was standing on the sidewalk, which is incorrect.

Q Can you shade approximately where you saw the Defendant pacing nervously, with the red pen?

A (Witness complied.)

Q And you've indicated a line with two arrows at either end, is that correct?

A That's correct.

THE COURT: Okay.

BY MR. ROCKTASHEL:

Q Sir, counsel referred to the truck stop beyond the hotel, specifically the Buckhorn area, the Buckhorn facility. Is that a place, in your experience, where passengers getting off these buses normally go during the 45 minute rest break?

MR. DEVECKA: Objection. Relevance.

MR. ROCKTASHEL: Your Honor, our position, it would be relevant to whether or not the property was abandoned, because under some theory that maybe the Defendant had decided he liked the merchandise across the way a little better than the merchandise --

THE COURT: I think it goes to the reasonableness of the location of the search. Overrule the objection.

BY MR. ROCKTASHEL:

Q Is that a normal location for people debarking the bus for the 45 minute rest stop to go to?

A No, it is not.

Q How about the parking area behind the Best Way Truck Stop facility that counsel referred you to?

A No, that's not a normal place, either.

Q Counsel talked about the canine being taken down the bus aisle approximately ten

minutes after the passengers debarked. Do you recall that testimony?

A Yes, sir, I do.

Q And was the canine taken on the bus while the passengers were still on the bus.

A No. We never take a canine onto the bus. We ask everyone to exist the bus, if they would like, and we tell them we are going to have a dog check the bus.

Q Now, do you force the people or compel the people to get off the bus?

A No. We simply ask them. If they don't want to get off, they don't have to.

Q But what is the purpose of telling them that you are going to bring the canine unit on the bus before you actually do that?

A Well, we want to make them, one, aware of what we're going to do. We pull no punches. And we also want to make it easier for the dog to work.

Q Did all the passengers actually get off the bus after you made the announcement in this particular case on September 1st?

A In this case there was one woman who stayed on.

Q Was she the same woman I think you had described as foreign who perhaps spoke with -- didn't understand English as well as perhaps the other passengers?

A That's correct.

Q Counsel asked you about the so-called cursory search, and I think you had described looking in the game room, the shower room, the halls, and you outlined a number of areas in the Best Way facility. Just to clarify -- I think the Court may have done that -- you conducted that search prior to learning about the bag on the seat in the bus; is that correct?

A That's correct. He -- he made me very curious and I wanted to find out where he was and I couldn't find him.

Q When you say he, you are referring to Defendant Perkins?

A Correct.

Q Now, when did the bag first come to your attention in the sequence of things?

A Probably toward the very end of the interdiction, toward the end of the interviews. We had actually done the final boarding. We had gotten on, done the interviews, identified all the bags, save this particular bag which is Exhibit 2. At that point that's when it came into our knowledge as that being the bag.

Q Would it be fair to say that you learned about the bag being on the seat as you conducted the interviews after the passengers got on the bus?

A That's correct.

Q Now, when you -- counsel asked you to describe where you went after you got off the bus, carrying the bag. When you got off the bus with the bag, did you see the Defendant in the vicinity of the bus?

A No, I didn't.

MR. DEVECKA: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: No, I did not. We didn't find him until approximately two hours later.

BY MR. ROCKTASHEL:

Q Did you see the Defendant pacing in the area you previously described and marked on that exhibit?

A Not at that time.

Q Would that location have -- strike that.

MR. ROCKTASHEL: I don't have any other questions, Your Honor.

THE COURT: Anything further, Mr. Devecka?

MR. DEVECKA: Yes.

RECROSS-EXAMINATION

BY MR. DEVECKA:

Q You knew where Mr. Perkins was found when he was arrested, is that correct?

A Yes, sir, I do.

Q That was about two hours after you began the interdiction?

A Approximately, yes.

Q You knew where he was for that entire two hours?

A No, sir, I have no idea where he was.

Q Do you know where he walked during that entire two hours?

A No, sir, I don't.

Q Now, you had completed this search, cursory or not, before you ever saw this bag; is that correct?

A That's correct. We do that with numerous people, not just Mr. Perkins.

Q Now, when you conducted this search, you were trying to satisfy your curiosity?

A I was trying to locate him, just to keep an eye on him, and I couldn't locate him.

Q Did you have probable cause to arrest the man?

A Absolutely not.

Q Did you call out his -- strike that. You didn't know his name at this point?

A I had no idea who he was.

MR. DEVECKA: No further questions.

THE COURT: You done?

REDIRECT EXAMINATION

BY MR. ROCKTASHEL:

Q What was your purpose in making this cursory search or otherwise described search of the location prior to opening the bag?

A That was me trying to locate him so I could find him.

Q And what was your intent or purpose in wanting to do that --

A Keep an eye --

Q -- once you actually found him?

A Wanted to keep an eye on him, just make sure he gets back on the bus.

Q Did you intend to employ any techniques similar to the interview techniques you conducted on the bus itself after the passengers boarded?

A Absolutely. When he got back on the bus, because he sparked my curiosity. If he had gotten back on the bus, I definitely would have interviewed him.

MR. ROCKTASHEL: I don't have any other questions.

RECROSS-EXAMINATION

BY MR. DEVECKA:

Q If you had found Mr. Perkins during this cursory or otherwise search, he didn't

have to answer any question you asked him, did he?

A That's correct. He didn't have to even talk to me.

Q But isn't it your experience when you display your badge and talk to passengers on the bus, that buses -- that 99 percent of them permit you to do what you want?

A No, they don't permit you to do what I want, but they permit me to search their bags upon consent.

Q Is that you want to do? Is that what you ask them to do?

A In some -- in most cases I do want to search their bag. I'll play the odds, the more I can get into, the more I can find.

Q And you say that 99 percent of people -- before you said 99 percent of people let you search their bags, is that correct?

A Almost every one has.

MR. DEVECKA: No further questions.

MR. ROCKTASHEL: No other questions, Your Honor.

THE COURT: You may step down, sir.

THE WITNESS: Thank you, Your Honor.

(Whereupon, the witness was excused.)

THE COURT: I'll give you 15 minutes, Mr. Rocktashel, whether you want to take it or leave it. And we have a 4:00 matter, and we will continue this hearing, whether we do it now or at 4:00 until Tuesday after jury selection.

MR. ROCKTASHEL: Just a moment.

THE COURT: So, you know, it's up to you.

MR. ROCKTASHEL: Your Honor, I would move for the introduction of the exhibits we've identified, and I think Trooper Barber touched upon just about every area that the other witness would talk about, too. So at this point we could conclude our testimony,

with the admission of evidence. I don't know if the Defendant --

THE COURT: Review the list of exhibits. What do we have admitted? Do we have any admitted?

THE CLERK: Nothing has been admitted, Your Honor.

THE COURT: Do you want to review the numbers?

THE CLERK: Exhibit 1 --

MR. ROCKTASHEL: We would move to admit the cocaine in the plastic bags.

THE COURT: Any objection?

MR. DEVECKA: Only that there's been no reason given for them being in plastic bags rather than duct tape bags. They aren't in the same state as the testimony showed them to be.

THE COURT: Well, for the purpose of this hearing, I don't think it really matters. Mr. Rocktashel did elicit testimony that it

had been transferred from the original container as observed by the trooper.

MR. DEVECKA: That's true, Your Honor. Withdraw my objection.

THE COURT: All right. It's admitted.

(Whereupon, Government Exhibit 1 was admitted into evidence.)

MR. ROCKTASHEL: Your Honor, we would move the introduction of the leather bag and associated contents, the ball cap, the shirt, the keys, et cetera.

THE COURT: Any objection, for purpose of this hearing?

MR. DEVECKA: None. None, Your Honor.

THE COURT: All right, they are admitted. We don't want them, though. You may keep them, Mr. Rocktashel.

(Whereupon, Government's Exhibit No. 2 was admitted into evidence.)

MR. ROCKTASHEL: I understand, Your Honor. We will take custody, with the Court's permission, of all the evidence.

THE COURT: What else do you have?

MR. ROCKTASHEL: We had the photos of the cocaine, 5.0 and 5.1 and the search warrant, Exhibit 6. And I believe that's basically all we've identified. And the copy of the bus ticket -- the clerk's reminded me. That's Exhibit 4.

THE COURT: Any objections to any of those, Mr. Devecka?

MR. DEVECKA: No, none, Your Honor.

THE COURT: They're all admitted.

(Whereupon, Government's Exhibit Nos. 4, 5.0, 5.1 and 6 were admitted into evidence.)

MR. ROCKTASHEL: Your Honor, the other items I didn't use was the trial exhibit list, and it seems to a dual purpose list we were using for this hearing as well.

THE COURT: Fine. Mr. Devecka -- well, so you rest at this point then with those admissions, correct?

MR. ROCKTASHEL: Yes, Your Honor.

THE COURT: Mr. Devecka, do you wish to produce any --

MR. DEVECKA: Well, I wish to offer these items into evidence and that we have testimony the Defendant. I'd rather not do it --

THE COURT: We've got D-1 and D-2 we have identified.

MR. DEVECKA: Right.

THE COURT: Any objection to those, Mr. Rocktashel?

MR. ROCKTASHEL: No, Your Honor.

THE COURT: They are admitted.

(Whereupon, Defendant's Exhibit Nos. 1 and 2 were admitted into evidence.)

MR. DEVECKA: Thank you, Your Honor.

THE COURT: You do wish to have testimony and delay this then until Monday--until Tuesday?

MR. DEVECKA: Right. I would just barely get started.

THE COURT: That's fine. All right. This case is continued, then, until jury selection at 9:30 on Tuesday, the 3rd of January. And the suppression hearing will resume immediately following jury selection. For planning purposes, that will occur no earlier than 11:00.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
vs.	:	No. 4:94-CR-213
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

TRANSCRIPT OF PROCEEDINGS

SUPPRESSION HEARING

Before: HON. JAMES F. McCLURE, JR.

Date : January 3, 1995, 1:01 p.m.

Place : Courtroom Number Two
Federal Courthouse
240 West Third Street
Williamsport, Pennsylvania

COUNSEL PRESENT:

GEORGE ROCKTASHEL, ESQUIRE
Assistant United States Attorney
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For - United States of America

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For - Defendant

INDEX TO EXHIBITS

FOR - DEFENDANT	IDENTIFIED	ADMITTED
Defendant's Exhibit No. 3	135	135
Defendant's Exhibit No. 4	135	135
Defendant's Exhibit No. 5	137	135
Defendant's Exhibit No. 6	138	135
Defendant's Exhibit No. 7	138	135
Defendant's Exhibit No. 8	139	135
Defendant's Exhibit No. 9	141	135
Defendant's Exhibit No. 10	141	135
Defendant's Exhibit No. 11	142	135

See also Defendant's Exhibits 3-11 offered and court stated all were previously admitted p. Appendix 179.

THE COURT: Your now, this is a continuation of the suppression hearing in the Perkins case. I think, Mr. Rocktashel, you had rested; is that right, sir?

MR. DEVECKA: Yes, Your Honor.

THE COURT: Mr. Devecka, then it's your turn.

MR. DEVECKA: Yes. I call Ed Perkins to the stand.

Your Honor, I handwrote a list of exhibits for today because I had no access to staff over the weekend.

THE COURT: Well, that's understandable. That's fine.

MR. DEVECKA: I apologize for the handwriting.

THE COURT: As long as the clerk can read it.

THE CLERK: Mr. Perkins, will you raise your right hand.

* * *

TED R. PERKINS, called as a witness, having been duly sworn or affirmed, testified as follows:

THE CLERK: Be seated. For the record, state your full name.

THE WITNESS: Ted R. Perkins.

THE CLERK: Thank you.

THE COURT: You may have to speak up a little louder, Mr. Perkins. I know the chair doesn't move but I know the mike's fine. Thanks.

THE WITNESS: Ted R. Perkins.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. DEVECKA:

Q For the record, are you the Defendant in this case?

A Yes.

Q Were you a passenger on a bus traveling from Newark, New Jersey, to Cleveland, Ohio, on September 1st, 1994?

A Yes.

Q Did that bus stop for a rest stop at about 9:30 p.m. at the Best Way Truck Stop in Centre County, Pennsylvania?

A Yes.

Q Just before the bus stopped, what were you doing?

A Sleeping.

Q Did you hear the bus driver make any announcements at the rest stop?

A Well, he said we were stopping for like 45 minutes, and keep aisle ways clear.

Q Of what?

A Baggages and stuff.

Q Did you get off the bus?

A Yes

Q Did you follow other passengers off the bus?

A Yes.

Q Did you see whether or not the other passengers had baggage?

A I didn't see any passengers' baggages.

Q When you left your seat, did you take your bag with you?

A No.

Q When was the first time that you noticed -- if you noticed, the Pennsylvania state troopers?

A After I got off the bus, after I got -- I was sleeping. After I got off, probably about ten, ten feet, probably about ten, fifteen feet.

Q From the doorway of the bus?

A Yes.

Q Then did you watch the Pennsylvania state troopers at the bus?

A Yes.

Q And where were you standing?

A I was standing on the sidewalk of the bus terminal or station.

MR. DEVECKA: Your Honor, I have premarked these Defendant's exhibits. Do you wish the court reporter or someone to note the date or anything on them?

THE COURT: Just show them to counsel. Have you seen them, Mr. Rocktashel?

MR. ROCKTASHEL: No, I have not, Your Honor.

THE COURT: We are going to have your exhibit sheet copied, Mr. Devecka.

MR. DEVECKA: I have another copy here, to save you a copy. Save you the trouble.

THE COURT: I wasn't sure if you had it.

MR. DEVECKA: I'm sorry. I do. I troubled the clerk to allow me to make three copies of this, so I have another one.

THE COURT: Now, what was your question about the exhibit numbers, Mr. Devecka? Before I had you give them to Mr. Rocktashel, you had a question about them.

MR. DEVECKA: Yes. Do you wish me to have them marked in any way other than in the way I've marked with the --

THE COURT: How do you have them? Just a --

MR. DEVECKA: They're Defendant exhibit stamps. That is fine.

THE COURT: That is fine.

MR. DEVECKA: I have used two the last time. Now it goes three, four.

THE COURT: Right.

MR. ROCKTASHEL: Thank you, counsel.

THE COURT: Any objection, Mr. Rocktashel.

MR. DEVECKA: No, Your Honor.

THE COURT: They are admitted.

MR. DEVECKA: Excuse me for a moment, Your Honor.

THE COURT: Sure.

MR. DEVECKA: They were in an order here by numbers.

BY MR. DEVECKA:

Q I'm going to show you what's marked Defendant's Exhibit 3. Can you tell the Court what that is?

A It's the front of the bus terminal.

Q Can you say where this bus stopped in relation to that terminal?

A Front here (indicating).

Q I'm going to show you what's marked Defendant's Exhibit 4. Can you say what that is?

A That's like is part of the terminal. It's like the -- where the restaurant is.

Q Okay.

A More or less.

Q If you're looking directly at the terminal, which sidewalk does that show, the left or the right?

A The right-hand side.

Q Okay. Now, where were you watching the police officers, state police officers at the bus from initially?

A On the sidewalk, on the side of the terminal.

Q Is that the sidewalk in exhibit -- Defense Exhibit 4?

A Yes.

Q Did you hear the testimony of Pennsylvania State Trooper Barber, the last part of this hearing when he testified about you walking back and forth on that sidewalk?

A Yes.

Q Is that the sidewalk you were on?

A Yes.

Q When you were on that sidewalk, what did you see the Pennsylvania State Police do then at the bus?

A Well, they were all standing by the bus and they -- people were standing out there, and people would get off the bus and they went up on the bus.

Q Are you saying that the people got off the bus?

A Passengers, yeah.

Q Right. And where were they standing, do you remember?

A They were standing out by the terminal. Some maybe went in, but they were standing out by the terminal.

Q In front of the terminal?

A Yes.

Q And how were they standing in relation to the bus?

A They were all scattered around, looking.

Q And did you see the police do anything in relationship to the dog that they had with them?

A Took the dog on the bus.

Q I show you Defendant's Exhibit 5. Can you tell the Court what that is?

A That's -- is like a loading dock or some kind of dock for trucks stuff or something.

Q Where is that in relation to the sidewalk where you were just prior to that?

A Around the corner from the one sidewalk.

Q Where did you go -- you say you saw the police take the dog on the bus?

A Yes.

Q Where did you go when that happened?

A Went around to the dock here (indicating).

Q Could you still see what was going on at the bus?

A I could and I couldn't because of the people. There was like -- the people were out there, so I couldn't see.

Q Now, what did you see happen then while you were at the corner there? That's in Defense Exhibit 5. What did you see in relation to the bus?

A I seen the troopers come off the bus.

Q And where did they go?

A To the restaurant.

Q And what did you do then?

A I went around, down to the deck here, and it was like a loading deck or whatever. Went around the building.

Q I show you what's marked Defendant's Exhibit 6. Can you tell the Court what's in that photograph?

A It's the back of -- it's the back of the building, like restaurant, the back of the restaurant.

Q Where is the loading dock, if you know, in reference to that picture?

A The loading dock is right here (indicating).

Q And after you jumped down from there, where did you go?

A I went around to the back of the building back here, around here (indicating).

Q I show you Defendant's Exhibit 7. Will you tell the Court what that is?

A It's --

Q Allow the judge to see this, too.

A It's the back of the terminal.

Q Where's that in relation to Defense Exhibit 6?

A It's like right here (indicating). This is where -- right here. It's like this part of the building going around, right there.

THE COURT: Looking to your right from six? Is that what --

THE WITNESS: Yeah. Yes.

THE COURT: Okay.

BY MR. DEVECKA:

Q I show you what's marked Defendant's Exhibit 8. Would you tell the Court what that is?

A. This is the parking lot right here. It's looking towards the hotel. This is the parking lot right here (indicating).

Q Can you show the Court how that -- that view is related to the view in Defendant's Exhibit 7, please?

A Well, if you looking this way, you will see this here (indicating).

Q In other words, --

THE COURT: That is the opposite direction?

BY MR. DEVECKA:

Q In other words, it's like this (indicating).

A Yeah. If you looking towards that way, you would see that.

THE COURT: Okay.

BY MR. DEVECKA:

Q I show you what's marked -- or let me ask you a question about Defendant's Exhibit 7. Did you go -- did you go where -- over the land that's shown in that exhibit?

A yes.

Q Defendant's Exhibit 7?

A Yes.

Q What's back there?

A Well' it was a - trucks were back there, a lot of land back there.

Q Is there something sticking up above the trucks there?

A It's like some kind of farm stuff. Hangar for grass feed or something.

Q Do you know what a silo is?

A No.

Q When you went across that area shown in Defense Exhibit 7, I believe it is, back toward the trucks and where that farm thing is, where did you come out?

A Come out just -- it's like -- come out right by -- was right back the truck stop. Like a little road like.

Q What kind of road?

A Kind of road cars drive on.

Q Were -- you remember seeing anything back there?

A It was the trucks was right there. The trucks was right there, fence. A lot of rocks and stuff like that.

Q Was there a fence around the field back there?

A Yes.

Q I show you Defendant's Exhibit 9. Can you tell the Court what that is?

A That's the road by the coming out from around the back right here where the truck

stop is. And the farm, whatever, hangar or -- that's where that is.

Q Hangar. Is it a tall building?

A I guess. I don't know. It's the thing I guess that holds bird seeds.

Q I show you what's marked Defend Exhibit 10. Well, first of all, on the night of September 1st, 1994, did you walk on that road?

A yes.

Q Show you what's marked Defendant's Exhibit 10. Before that, how did you get to that road?

A I went around -- went around here. Went around here, come all the way out around there, from on the side of the terminal thing, whatever, coming out that way (indicating).

Q That's -- that's the end of this terminal?

A Yeah.

Q Going over there towards that?

A Yes.

MR. ROCKTASHEL: For the record, Your Honor, I realize there's some leading here that we aren't objecting to, but what exhibit are we talking about, that counsel's referring the Defendant to and that's he's using to highlight this?

MR. DEVECKA: Seven.

MR. ROCKTASHEL: Seven. Thank you.

BY MR. DEVECKA:

Q Show you Defendant's Exhibit 10. Can you tell the Court what that is?

A That's the road coming out where the farm -- out were everything is, and the truck stop's right around there.

Q Did you travel over that area --

A Yes.

Q -- the night of September 1st?

A yes.

Q Show you what's marked in Defendant's Exhibit 12. I'm sorry. Defendant's Exhibit 11. Can you tell the Court what that is?

A That's the road that comes out where this is right here (indicating).

Q Where what is?

A The trucks and the bird feed. And it comes out right by the truck stop.

Q Can you tell the Court where you ended up the night of September 1st after you jumped down from the loading dock and you went down around that hotel?

A Ended up right here (indicating).

Q What exhibit number is that on the back?

A Eleven.

Q From that position, what could you see?

A The front of the bus terminal. The front of the bus. The whole bus.

Q When you got there, what did you see happening?

A Well, I seen people were boarding the bus, getting on the bus.

Q And then what else did you see?

A Officers standing out there, officers went up on the bus.

Q And then what did you see?

A I seen officer come off the bus with the bag.

Q Which bag was that?

A The black leather bag.

Q Was that the bag you left on the bus?

A Yes.

Q What did you do then?

A Wondered what was going on.

Q How long did you stay where you were?

A Not too long. Probably seconds. I went back around the building.

Q Seconds from when?

A Once they brung the bag off the bus.

Q And then where did you go?

A Went back around the building.

Q And where did you go then?

A Over to the other trucks, truck stop on down the street.

Q I show you what's marked Defendant's Exhibit 8. Do you recognize that?

A Yes.

Q And where did you go in relation to that?

A Well, this right here is the coming around the building. It's the terminal parking lot and it leads over to a couple more truck stops.

Q What did you -- where were you eventually -- or were you eventually stopped that night?

A I was stopped at a truck stop, the Buckhorn Plaza Truck Stop.

Q And where is that in relation to that photo?

A It's over that -- straight that way (indicating). Straight down. It's about probably next door to the hotel.

MR. DEVECKA: Your Honor, do we have the exhibits from the earlier hearing?

THE COURT: Yes.

MR. DEVECKA: Do we have the paper that was marked -- oh, here it is. I see it.

BY MR. DEVECKA:

Q Show you what's marked Defendant's Exhibit 1. And can you say on Defendant's Exhibit 1 where Buckhorn is where you were stopped?

A Right here (indicating).

Q And you see it indicates there something called hotel?

A Yes.

Q Does that appear in any of those photographs that we were just looking at?

A Yeah. Right here (indicating).

Q And what exhibit number is that?

A Eight.

Q And this red arrow on here, is that on the sidewalk in front of terminal to the right or the left as you look at the terminal?

A You might right here (indicating)?

Q Um-hum.

A Where I was? This is the sidewalk right here.

Q Is that where you were?

A Yes.

Q And in that drawing, can you say where the loading dock is, the corner of the building with the loading dock on it?

A Loading dock is right here (indicating).

MR. ROCKTASHEL: Could marks be put on that exhibit, Your Honor, in a different colored pen so we can memorialize what it is the Defendant's testifying to?

THE COURT: Yeah. That's the only thing new on there, I think. Do we have a green marker?

BY MR. DEVECKA:

Q Would you mark where the sidewalk is that you were watching the bus from at the beginning?

A Right here (indicating).

Q Can you mark an X there?

A Yes.

Q Mark an L where you said the loading dock was in that building.

A (Witness complied.)

Q Mark an H on the building you say is depicted in Defendant's Exhibit 8, the photograph.

A (Witness complied.)

Q And mark a me where you were -- in the plaza where you were picked up, arrested.

A (Witness complied.)

Q Thank you.

Now, when you were on this sidewalk where you have this X marked, did you still have your bus ticket with you?

A Yes.

Q When you went around the building and came up near that truck park there and that's an Exhibit 11, did you still nave your bus ticket with you then?

A yes.

Q Had you seen any cars leaving the truck stop when you were standing over there at the point where -- or in the position of Defense Exhibit 11, did you see any cars leaving the truck stop?

A Yes. There was cars leaving.

Q And how close were the cars coming to where you were?

A Actually they had to go right past me to get out.

Q And they would -- they would exit to which direction; your right or your left, do you remember?

A I know they would go up -- they would go up to -- they would come out this way and go out that way like there (indicating).

Q Well, let's ask you to indicated a dotted like in that pen I gave you on Commonwealth's -- Government's Exhibit -- excuse me, defense exhibit. Excuse me. Defense Exhibit 1, indicate by dotted line where the bus would go or where the cars would go -- excuse me -- where you saw the cars going go to leave?

A (Witness complied.)

Q Okay. Can you draw an arrow as to which way they would have been headed when they went along this dotted line?

A Draw an arrow?

Q No. How they who come out from here?

A Oh. (Witness complied.)

Q Why were you concerned with where the bus drove or where the cars drove when they left while you were at that corner?

A Well, I was wanting to get back on the bus.

Q Now, when you were stopped by the police at the Buckhorn Truck Stop, did you have your bus ticket with you?

A No, I didn't.

Q What did you do with it?

A Balled it up, threw it down.

Q When was that?

A Once I came back around from the side of the building right there.

Q And what, if anything, did you see the police do just before you did that?

A I don't understand what you're saying.

Q You were -- you testified you were at the corner watching the bus.

A Yes.

Q Is that right? Could you see the bus from there clearly?

A Yes.

Q What did you see happen?

A Seen police officer come off the bus with the bag and with -- looking in the bag, opened the bag up.

Q And what did you do then?

A Went around the building. Went around the building. Threw my ticket down.

MR. DEVECKA: That's all the questions I have.

THE COURT: Cross-examine.

MR. ROCKTASHEL: Your Honor, may I approach the witness to retrieve the exhibits?

THE COURT: Certainly.

CROSS-EXAMINATION

BY MR. ROCKTASHEL:

Q Sir, you bought your bus ticket in Newark; is that correct?

A Yes.

Q And you bought your bus ticket approximately four minutes after the bus was scheduled to depart at six p.m., isn't that correct?

A I don't know what time it was. I just purchased a ticket.

Q You were late getting on the bus, though; isn't that true?

A Yeah.

Q The bus already had all the passengers on by the time you got there with your paid ticket, isn't that correct?

A Yes.

Q And you were traveling from Newark to Cleveland, Ohio one way; is that true?

A Yeah.

Q And you paid $66.00 for the faire between Newark and Cleveland, is that true?

A I believe so.

Q Well, does that sound about right, $66.00?

A Yes.

Q Did you have a chance to look at the government exhibit that we previously marked in this case. There was a copy of the ticket, I believe. I am going to show you Government Exhibit 4.0. Is that an accurate photocopy of the ticket you purchased to travel between Newark and Cleveland on September 1st, 1994?

A It could and it couldn't be.

Q Does it look similar to the ticket you balled up and threw away when you saw that the police came off the bus with your bag?

A Yes.

Q Now, the bus driver had already closed the door by the time you got to the bus in Newark; isn't that true?

A I don't remember.

Q But the bus driver was already in the seat and the passengers were in their seat at

the time that bus was ready to depart; isn't that true?

A Yes.

Q And they were all in their seats at the time you got at the bus to get on the bus and travel toward Cleveland; isn't that true?

A Yes.

Q Now, your bus left at six p.m. and was scheduled to arrive in Cleveland, according to the ticket, at 2:55 a.m.; isn't that that true? Am I mistaken about that or is that when you were scheduled to arrive in Cleveland?

A There's what time the ticket said.

Q Well, do you know what time you were scheduled to get into Cleveland that night?

A The ticket said I would arrive at 2:55, I presume I would have arrived at 2:55.

Q Well, do you recall what time you were scheduled to arrive in Cleveland?

A I guess 2:55.

Q Now, when the bus pulled into Milesburg, the area where the truck plazas that we're talking about, you testified that you heard an announcement by the bus driver that you were stopping for 45 minutes at that location; isn't that true?

A Yes.

Q And you heard that announcement by the bus driver?

A Yeah.

Q And you knew that bus was only going to stop there for 45 minutes, correct?

A Yes.

Q And you knew that was the only rest stop until you got to Cleveland, isn't that true?

A Nope.

Q Well, did you know when the next rest stop was going to be?

A No.

Q You had been on the bus for approximately three hours, isn't that true, by the time the bus stopped in Milesburg?

A I don't know. I was sleeping.

Q Well, the bus left around 6:00, isn't that true, or shortly after when you arrived?

A Yeah.

Q And you stopped, according to your testimony on direct examination, in Milesburg at approximately 9:30 p.m., isn't that true?

A Yeah. Around there.

Q So you were asleep on the bus for approximately three and a half hours, isn't that right?

A Well, I just didn't fall asleep that quick.

Q Well, let's put it this way. You didn't get off the bus at any time between Newark and Milesburg, isn't that correct?

A Yes.

Q You never got off the use of the bathroom isn't that true?

A Between --

Q Between Newark and Milesburg, Pennsylvania, where you were arrested, you never got off the bus, for instance, to buy a refreshment or a snack at any of the stops between Newark and Milesburg, did you?

A No.

Q You stayed on the bus the entire time, right?

A Yes.

Q For approximately three and a half hours, isn't that correct?

A Yeah.

Q Now, when you got off the bus in Milesburg, according to your testimony, you got off the bus and you recognized the men standing there a distance from the bus as police officers; isn't that correct?

A No, that's incorrect.

Q Well, when did you first realize that police were at the location?

A After I got off the bus, I was probably about 10, 15 feet. I was sleeping.

Q So you got off the bus and within walking ten feet away from the bus after exiting, you noticed thee were police around the vicinity of the bus; isn't that true?

A Yes.

Q And they were wearing plain clothes, but they had patches on their hats and their windbreakers; isn't that correct?

A I can't recall.

Q Well, did you see a canine, a dog nearby?

A Yes.

Q And did you see this gentleman, Trooper Jack Felicita, with that dog on a leash?

A Yes. Well, scratch that. I'm not sure. I'm not sure if he was the guy that had the dog.

Q Is it fair to say that you saw a person who you believed to be a police officer with a police dog standing in the vicinity of the bus when you got off the bus in Milesburg?

A I can't recall.

Q Well, you recognize these gentlemen as being with the police, some police department, state police, et cetera; isn't that true?

A Yeah, once I got off the bus. Yeah.

Q And you never even got into the terminal and you knew that they were police officers, isn't that correct?

A Yes.

Q And you had already left your bag on the bus by the time you recognized the police officers as police officers, isn't that true?

A Yes.

Q And instead of going inside the terminal, you stayed outside the terminal and walked back in forth in front it, didn't you?

A Yes.

Q And you were keeping an eye on what the police were doing, isn't that correct?

A Doing the same thing that everybody else was doing.

Q Well, you were concerned about the police at that point, weren't you?

A No, I wasn't concerned about the police.

Q You planned on getting back to the bus, is that your testimony?

A Yes.

Q But you never got on the bus, isn't that true? You never got back on the bus after the rest stop was over, correct?

A True.

Q Instead, you saw the police from around the corner of the building come off the

bus with your bag, and you threw your bus ticket away; isn't that right?

A No, I didn't throw the bus ticket away then.

Q What did you do with it? You balled it up?

A I had went around the building. When I seen the police come with the bag, I went back around and I balled the bus ticket up.

Q Did you have the bus ticket on your person?

A Yes.

Q Were you wearing a wallet that day?

A No, I wasn't.

Q You were wearing a jump seat, like an athletic sweatsuit, isn't that correct.

A Yeah.

Q And it was a dark colored sweatsuit?

A Yeah.

Q And you had your bus ticket in one of the pockets of the sweatsuit, is that correct?

A Yeah.

Q And the jump suit, when it's the right side out, has a light colored gray panel on the front of it, the breast and the stomach area; isn't that correct?

A Yes.

Q And the rest of it's black, isn't that right?

A Yes.

Q And it's made out of something like nylon, isn't that true?

A Yeah.

Q And you had the bus ticket in one of your pants pockets in the sweat pants, is that correct?

A It could have been a pants pocket. It could have been the jacket pocket. I really don't remember what pocket it really was in. It was in a pocket.

Q That is your ticket to go from Newark to Cleveland, isn't that correct?

A Yeah.

Q And you were basically ripping it up and destroying it so it couldn't be used, isn't that true?

A Basically. Yeah.

Q Because you knew you weren't going to get back on the bus after you saw the troopers come off with the bag, isn't that correct?

A Yeah.

Q You didn't plan on going over to that bus and getting back in your seat and continuing on the Cleveland, did you?

A Yeah, I planned on it.

Q But you didn't do it in this case because you said the police there with the bag and you knew what was inside the bag, specifically three keys of cocaine; correct?

A False.

Q Well, sir, when you saw the police come off the bus with the bag, instead of

going on the bus, you went around the back of the building; isn't that the true?

A Yes.

Q And when you got back behind the building, knowing that the police had taken the bag off the bus, your bag, that black leather bag, you destroyed your ticket; correct?

A Yeah.

Q And then the bus left and you weren't on it, true?

A Yes.

Q Now, after you went around the corner and you destroyed your ticket, is that when you went into the area that's been described in some agricultural terms as place where seed was stored and the like?

A Once I -- what you say?

Q After you ripped up your ticket or balled up your ticket after you saw the police get off the bus with your bag --

A Yeah.

Q -- that's when you went on this back road area that was depicted in some of these photographs, isn't it?

A No. I went right back around the building.

Q Was the bus still there?

A Well, the -- yeah, the people -- the bus was still there and the passengers were all on the bus.

A Yes.

Q Were the police still in the vicinity of the bus?

A Yes.

Q And you walked right around in full view of these police officers after your destroyed your ticket, is that your testimony?

A Nope.

Q Well, where did you stay? Did you stay out of the view of the police officers during that period of time?

A If I would have walked back around, the police officers, I walk dead in front of them. I went around the building.

Q You went around the building out of the police officer's view, is that fair to say?

A Yes.

Q And you went into the vicinity that looked to you as if it was a farm area, isn't that correct?

A No. I went around, back around the building. It was a farm area around there. Don't get me wrong, but I went back around the building.

Q And that's an area that's enclosed by a fence, is that correct?

A It's got a parking lot next to the trucks with the fence all up around there.

Q And that's some distance away from where you were ultimately apprehended at the Buckhorn Plaza, correct?

A Yeah.

Q You had to walk a pretty good distance to get over to the Buckhorn Plaza from this area behind the Best Way Plaza right?

A Not -- not really.

Q Let's put it this way, sir. You had to walk through a field of some sort, is that true?

A Go straight across to the hotel. Right through there (indicating).

Q Did you walk through any grassy area to get --

A Yeah.

Q You did? And the grass was wet? Isn't that true?

A Yes.

Q It's not a paved area, is it?

A It was a paved area once you go through --

Q Once you go through the wet grassy area?

A Once you come back around the building, and you can walk across the paved area.

Q But to get to the paved area, you have to go through a grassy area that has some moisture?

A That's grass back there.

Q Well, did you walk through that grassy area?

A I was in the grass.

Q And the grass was wet, wasn't it?

A Yeah.

Q Now, let me show you Defense Exhibit 1 while we're on that topic. Your testimony is that you were pacing -- strike that. That you were walking in this red arrow area near the bus, is that correct?

A Yes.

Q And you went to that location after -- within ten feet of getting off the bus you

noticed that the police officers and the police dog were there, correct?

A No. I got off the bus. And I was like around here. Then I went over here (indicating).

Q You are indicating the curved area, the covered area of the entrance to the Best Way; is that correct?

A I was standing around here just like the rest of the people was. I mean there was other people out there, too.

Q And then I take it at some point you went around the corner that you've indicated here with the L and the star, is that right.

A Right here. That's -- I was standing right around here (indicating).

Q But at some point you went around the corner of the building where the L is indicated, isn't that right?

A Yes.

Q And that was before the bag came off the bus, isn't that correct?

A Yes.

Q And then at some point when the bag came off the bus, and you saw the bag come off the bus from around the corner of the Best Way, that's when you went around this area back here behind the Best Way; is that correct?

A No, it's not.

Q Where did you go after that?

A I went around here. I seen the bag come off the bus when I was standing right here (indicating).

Q So you were on other corner, is that correct?

A yes.

Q Let's see if we can depict that somehow. Can you put a mark, star of some point where you were when you saw the bag come off the bus?

A (Witness complied.)

Q Now you are facing the Best Way. This is the left side, the left corner of the Best Way; is that correct?

A Yes.

Q Now, to get from the right side where you have an L to this area, you had to go around the back of the Best Way; isn't that right?

A Yes.

Q And that was out of the view of where the bus was, isn't that correct?

A Yes.

Q How long did it take you to get from point L around the back of the Best Way to this left side where you put a star?

A I couldn't tell you.

Q Well, did it take more than five minutes?

A I couldn't tell you.

Q Could you do me a favor and could you take that blue pen and mark the route you traveled from point L over here to where the star is on the left side of the Best Way? Just so we can get a rough idea of the way you went.

A (Witness complied.)

Q Now, from this point at the corner where you ended up at the point in time when the bag came off the bus, you had a unobstructed view of the bus at that point; isn't that correct? You could see the bus, isn't that right?

A Yes.

Q And there was nothing in your way, is that right?

A Nope.

Q I take it it's pretty well lit out in front of the Best Way? It's illuminated by night lights, parking lights?

A Yeah, lights out there.

Q You could see that was your black leather bag that you had taken on the bus in Newark coming off the bus in the possession of the police officers, isn't that correct?

A Yes.

Q And you knew it was your bag they were taking off, correct?

A Yes.

Q Where did go from this point where this star is?

A Back around here (indicating).

Q So you went all the way back around the route you took behind the Best Way, is that correct?

A Um-hum.

Q And then where did you go?

A Out here and over towards to the hotel (indicating).

Q Can you put an arrow in that rightward direction that would indicate where you went?

A (Witness complied.)

Q Did you go through this area marked woods here?

A I -- I know I went through some grass, but you wouldn't come straight through the hotel there, too.

Q You did or did not go directly through the hotel area?

A I didn't go directly through. I mean it's a clear shot straight through there.

Q To the hotel or to the Buckhorn? I wasn't sure where you were indicating.

A To the hotel. But then you come back around here, then this -- you know, the woods -- I mean you know the woods, but then it's the Buckhorn hotel.

Q Sir, I take it you're not that familiar with this particular location. This was the first time you were there, is that true?

A Yes.

Q And did you take note of when you were at this advantage point at the corner of the building watching the police activity, of the fact that State Route 150 goes right in front of the Best Way?

A Did I take --

Q Did you notice that State Route 150 goes directly in front of the Best Way?

A I presume.

Q Well, could you see that from your advantage point here at the corner of the building where you saw the bag come off bus?

A Could I see the road?

Q Yes.

A Yes.

Q And it's a hard topped road, isn't that correct?

A I'm not sure.

Q And there's at least two lanes in opposite directions of travel, is that correct?

A Yes.

Q And did you note whether or not it had a berm or a place to walk?

A On the road?

Q Yes.

A I'm not sure.

Q Now, from this corner at the Best Way here where you put the star, you had to walk through a parking lot to get through State Route 150; isn't that true? There's a parking lot between State Route 150 and the Best Way, isn't that right?

A Yes.

Q And that's where the bus was parked, that vicinity; isn't that right?

A No. It was parked in front of -- bus over here (indicating).

Q But there are pumps indicated here where the trucks and the cars can fill up with gasoline, isn't that right?

A Yeah.

Q Just kind of like a big gas station, right?

A Yeah.

Q And you could have, if you wanted to, taken a more direct route across that parking lot to Route 150 to walk down to the Buckhorn Plaza or the hotel, isn't that true?

MR. DEVECKA: I'm going to object. He's asking the witness to speculate what he could have done. He could have done anything.

THE COURT: Overruled.

BY MR. ROCKTASHEL:

Q Let me put it this way. A more direct route than going back behind the Best Way, through the grassy area, around the woods, behind the motel to the Buckhorn Plaza would have been to walk right across, past the gas

pumps to State Route 150, walk down State Route 150 to the hotel or the Buckhorn Plaza; isn't that true?

A I guess you could have did that.

Q It would have been a lot shorter, wouldn't it?

A Well, I don't know.

Q Well, you wouldn't have had to walk through any grass; isn't that true?

A I walked through there the first time.

Q You wouldn't had to have gotten wet, isn't that true?

A Yeah, but I was already wet.

Q It would have been a dryer way to go? Well, you were wet from going behind the back of the Buckhorn Plaza on the two occasions that you did. Was it wet back there?

A It was grass back. I mean I guess that time of the night, you get dew on the grass.

Q You didn't notice any signs for the men's room or the restaurant in the rear of the Buckhorn Plaza, did you?

A I didn't pay attention.

Q Well, you didn't go back there to relieve yourself, shall we say?

A No.

Q You didn't go back there to get a snack or a soda or some refreshment for the rest of your trip from Milesburg to Cleveland, Ohio, did you?

A Where? Behind the building?

Q Yes.

A No.

Q There were no hot dog stands, no soda machines, et cetera, back there; isn't that true?

A I don't think there was at that time of the night.

Q But in event, that's not why you went back behind the Best Way, is it? You didn't go back there to relieve yourself, correct?

A No.

Q You didn't go back there to buy a soda, true?

A True.

Q And you didn't go back there buy some kind of food or refreshment to eat on the rest of your journey, isn't that correct?

A Yeah.

Q You went back there because you wanted to get out of the view of the police officers that you saw when you got off the bus, isn't that true?

A Nope.

Q Sir, when you saw that police dog, you knew it was affiliated with some kind of law enforcement agency; isn't that correct?

A Yeah.

Q And you knew that the police use the dogs to detect drugs, to sniff out drugs; isn't that true?

A I don't know -- I guess they use them for drug, attack dogs.

Q Well, I just want to get it clear. You knew these gentlemen, the one with the dogs and a other ones dressed similarly in their windbreakers and the state police patches weren't some kind of security outfit, they were police; isn't that correct?

A Yeah.

Q You knew they were police officers, right?

A Yeah.

Q And you knew that from a point within ten feet of the bus when you got off the bus, correct?

A Yeah.

Q And you knew they were police when you went around the side of the building, around

the back of the building to the advantage point where you saw them take the bag off the bus; isn't that correct?

A Yeah.

Q When you saw them take the bag off the bus, you knew it was police officers, the ones that you had seen previously that were taking your bag off the bus; isn't that true?

A Yes.

Q Now, at no point in time did you go up there and say, gentlemen, excuse me, you are taking my bag off the bus; did you?

A No.

Q You never went up to the police officers and said, sir, I'd like my bag back; isn't that correct?

A Yes.

Q Instead, you went back around the plaza, over into the direction of the motel and the other truck plaza, isn't that true?

A Yes.

Q In fact, by that point you had already destroyed your ticket as you were en route over to the motel; isn't that true?

A Yeah.

Q Now, sir, you destroyed the ticket because you didn't want that ticket found on your person; isn't that correct?

A Yeah.

Q You didn't want the police to stop you, pat you down, frisk you and find a ticket that would connect you to the bus trip on which that bag had been traveling as well; isn't that correct?

A I wouldn't want them to --

Q You wouldn't want them to find on your person, if they would stop and search you, that ticket that would link you to the bus from which the bag was taken?

A Yeah.

Q Are you the same Ted Russell Perkins who was convicted of robbery in Akron, Ohio, and sentenced to confinement for four years to fifteen years?

A Yes.

Q And that conviction occurred, correct me if I'm wrong, in approximately February of 1988?

A Yeah.

Q By the way, you never tried to get a refund for your ticket before you balled it up and tried to get rid of it, did you?

THE COURT: Mr. Rocktashel, I think you're being unduly repetitious about what happened after the bag was opened. You didn't ask that particular question but --

MR. ROCKTASHEL: I'll move on, Your Honor.

BY MR. ROCKTASHEL:

Q When you got on the bus in Newark, you put the bag in the overhead passenger storage

compartment, isn't that correct, or did you put it on the seat?

A Overhead.

Q In the overhead?

A Yeah.

Q And that's not a locked compartment that you have to use a knob or anything to close up? It's out in the open for everybody to see, isn't that correct?

A The compartment?

Q Yes.

A No, it doesn't have shut doors. Just --

Q Right. You could see your bag laying on the shelf, isn't that correct? You could see it if you stood up and looked into the--

A Well, if you stood up. But if you sit down, you can't see it.

Q Of course not. Other people would, if they want to put their bags next to your bag; isn't that correct?

A Yes.

Q And when you got off the bus in Milesburg, before you realized the police were there, you had put your bag on the seat; isn't that correct?

A Yes.

Q And that seat was -- strike that. There are two seats on the side of the bus that you were sitting on, isn't that correct? There's your seat -- strike that. There is a window seat and an aisle seat, isn't that correct, where you were sitting?

A Yes.

Q And were you sitting on the window seat or the aisle seat during your trip?

A On the aisle seat.

Q And the bag was next to you on the window seat, is that correct?

A No, it's not correct.

Q Where was it?

A I was sitting. The bag was on top of the thing up there.

Q You when you got off the bus after the driver announced at 45 minute stop, you took the bag off the overhead compartment and put it on the seat, is that correct?

A Yes.

Q Now, did you put it on the window seat or the aisle seat?

A I don't know. I just sat it in the seat.

Q And put the bag there in plain view where other people could see it, isn't that correct?

A It's mine. I don't -- by plain view, all in the bus, when you look. I just sat the bag down.

Q In fact, anybody walking past your seat could see that black leather bag sitting there; isn't that correct?

A Yes, correct.

Q Now, that bag was made of leather; is that true?

A Yeah.

Q It was a pretty high quality bag?

A I don't know. I didn't price no bag.

Q Did you buy the bag?

A No, I didn't.

Q Do you know how much it was worth?

A Nope.

Q You never got off -- strike that. From the time you first noticed the police from the time the bus left, you never once when in the terminal; isn't that correct?

A Before when?

Q Before -- strike that. Between the time that you got off the bus and first noticed the police, until the time that the bus left, you never got inside the terminal at

all, the Best Way terminal; isn't that correct?

A Yeah.

Q You never went inside the building, true?

A Not I -- I don't remember. I just woke up.

Q You never went in to buy another ticket to Cleveland, did you?

A For what?

THE COURT: Mr. Rocktashel.

BY MR. ROCKTASHEL:

Q Sir, when you got off the bus before you knew the police were present, you planned on going into the terminal, did you not?

A Got off the bus -- sit on the bus ride. You want to stretch.

Q Sure. And one way to stretch would be to get on the bus and in the terminal, for instance, and use the bathroom; isn't that correct?

A Another way to stretch is to get off the bus and just walk around and stretch your legs.

Q Did you go inside the terminal?

A I know I stayed outside the terminal.

Q But when you got off the bus before you realized the police were present, you planned on going into the terminal to use the facilities there; did you not?

A If I had to use the bathroom, I would have. But I didn't have to use the bathroom so I stayed outside.

MR. ROCKTASHEL: Your Honor, may I have a moment to check my notes?

THE COURT: Go ahead.

BY MR. ROCKTASHEL:

Q Sir, at the point in time after you were walking in front of the Best Way Plaza, when you went into this -- went around to the area marked L, the officers had not yet taken your bag off the bus; isn't that correct?

A Yes.

Q And from that point you could see the officers taking the dog onto the bus, isn't that true?

A I seen them took a dog on the bus, but it was so many people standing out there that I couldn't even see what was going on.

Q Now, were you on sidewalk area that's marked here red, pacing, when the dog was put on the bus, or where you at the star location to the right of that area, or were you at the L location when this dog was taken on the bus?

A You asked me was I pacing?

Q Well, I didn't say you were necessarily pacing, but this identified with pacing and red arrow?

A I was standing right here (indicating).

Q So you were standing where this other asterisks is on the -- what we'll call the

right side of the Best Way facility, isn't that correct?

A Yes.

Q And from that standpoint, you could see them take the dog on the bus; isn't that true?

A Yes.

Q And you figured, did you not, that they were planning on using the bus -- the dog to detect the presence of drugs on the bus, isn't that corrects?

A I didn't know what they were -- I didn't -- curious what was going on.

Q But after the dog was taken on the bus, that's when you went to the vicinity of this area marked L; isn't that right?

A I waited for a minute. I couldn't see because the people was standing out there, so I went around there.

Q And you went around to this location at the back of the Best Way where you saw at

some point in time, the bag being taken off the bus; isn't that correct?

A Want to say that again?

Q After you saw the dog being put on the bus, you walked around the back of the Best Way and stood at this corner on the left side of the truck terminal until you saw the bag being taken off the bus; isn't that correct?

A I saw the officer come off the bus, you know, and I went around here and then the officers -- people were getting on the bus.

Q Well, the officers got on the bus while you were still on the right side of the building; isn't that correct?

A Yes.

Q And they got on the bus with the dog, isn't that right?

A Yeah.

Q Now, up until the time when you saw the dog being put on the bus, you planned on

getting back on the bus and going to Cleveland and retrieving your bag, did you not?

A I didn't think I had to retrieve it.

Q Well --

A I mean -- I planned on getting on the bus at all times.

Q You planned on getting on the bus at all times?

A Yeah.

Q Had the bus left by the time you walked back around the Best Way to go over toward where the hotel was?

A No, the bus was still -- was still there. The police were out there, you know.

Q The police were still there and so was the bus, isn't that correct?

A Yes.

Q At any point while you were on left side of the Best Way, did you ever walk back over to the bus and try to get on?

A No.

MR. ROCKTASHEL: I have no other questions, Your Honor. Thank you.

THE COURT: Any redirect?

MR. DEVECKA: No, Your Honor.

THE COURT: You may step down, sir.

(Whereupon, the witness was excused.)

THE COURT: Any further testimony, Mr. Devecka?

MR. DEVECKA: Yes, I do. I move the Exhibits 3 through 11.

THE COURT: I think I already admitted those, Mr. Devecka. Any other testimony?

MR. DEVECKA: None.

THE COURT: Mr. Rocktashel, any rebuttal?

MR. ROCKTASHEL: No, Your Honor. Thank you.

THE COURT: Do you wish to summarize your position, Mr. Rocktashel?

MR. ROCKTASHEL: Yes, Your Honor.

THE COURT: You elaborated on your brief. I understand that. But some summarize it based on what we've heard.

MR. ROCKTASHEL: Yes, Your Honor. The record in this case, as adduced at this hearing, establishes that this Defendant has no expectation of privacy under the fourth amendment. He abandoned his bag on the bus. Went he got off bus in Milesburg, all of that occurred prior to the point in time when the officers determined that the bag was abandoned, based on objective points apparent to them, and looked inside the bag. And I'd just like to recite a few of those for the record.

I think they're outlined in full in our brief. But basically, the Defendant gets off the bus, and as he himself has admitted, immediately recognized the officers as police officers. In fact, Trooper Barber testified

he was within ten feet of the bus itself. The Defendant, who previously appeared groggy and as if he had just been sleeping, according to his own testimony, suddenly became more concerned and focused on activity of the police. In fact, he's testified to the same here today.